

801.40

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

December 9, 1991

BY FAX

This material may be subject to
a confidentiality provision of

Mr. David Rubenstein, Esq.

6th & Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Informal Hart-Scott-Rodino Opinion Letter

Dear Mr. Rubenstein:

As you suggested, I am writing to obtain the Staff's position on the applicability of Section 801.40(c) to the transaction described below.

FACTS

Company "A" and Company "B" propose to form a joint venture corporation ("NEWCO"), the stock of which will be owned 80% by Company A and 20% by Company B.

At the time of the formation of NEWCO, Company A will transfer less than \$25 million and possibly less than \$15 million to NEWCO, almost all of which will immediately be transferred to

Company B. Company B will contribute less than \$15 million to NEWCO. No person contributing to the formation of the joint venture has agreed to extend or guarantee any credit or other obligations of the joint venture.

At the closing of the transaction, NEWCO will have total assets of less than \$25 million.

ANALYSIS

Company A's acquisition of 80% of NEWCO is valued at less than \$15 million. Thus, under Section 802.20(b), this ~~transaction is reportable only if NEWCO has total assets of \$25 million or more as defined by Section 801.40(c)(1).~~

[REDACTED]

Section 801.40(c)(1) provides that the assets of a joint venture corporation include "all assets which any person contributing to the formation of the joint venture or other corporation has agreed to transfer or for which agreements have been secured for the joint venture or other corporation to obtain at any time, whether or not such person is subject to the requirements of the act."

the joint venture corporation as defined by paragraph (c). NWCO will not hold these funds for any length of time. Interpreting

the accounting of the assets held by NWCO at the close of the transaction.

We would appreciate learning the staff's position on this matter as soon as practicable. We would, of course, be pleased to answer any questions or discuss this matter further.

Sincerely,

Dec. 12: [redacted] it stands now. [redacted] [redacted]
Reportable requires as to [redacted] [redacted]
801.40 of all comm. RS. of our [redacted] [redacted]
agree.