

Item 7(d) of the form

[REDACTED]

[REDACTED]

November 6, 1992

BY FAX

Richard B. Smith, Esq.
Federal Trade Commission

Nov 9 9 52 AM '92
FEDERAL TRADE COMMISSION

ROOM 301
Sixth Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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FEDERAL TRADE COMMISSION

Re: Financial Information Required by Item 4(b)
of Premerger Notification and Report Form

[REDACTED]

the Premerger Notification Office to assist us in determining whether the submission of certain financial documents in response to Item 4(b) of the Notification and Report Form For Certain Mergers and Acquisitions (the "Form") would constitute substantial compliance with respect to Item 4(b)

Company, that is not required to make any filings with the Securities and Exchange Commission (the "SEC"), including a Form 10-K. No certified or audited financial statements were prepared for any period with respect to the year in question. (The Form includes, as a document customarily distributed to shareholders, which typically includes financial statements, a description of the business, management's discussion of the year's results, etc.)

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prepared for or distributed to the Company's shareholders.
For the year in question, uncertified and unaudited year-end
consolidated financial statements which included a balance

Item 4(b) requires the most recent annual report,
the most recent annual audit report and the most recent
regularly prepared balance sheet (if different) of the per-

for purposes of Item 4(b), the Company does not have an
"annual report" or an "annual audit report" and, according-
ly, is required to file only its most recent regularly pre-
pared balance sheet.

First, we believe that the Company's year-end
financial statements as described above do not constitute an
"annual audit report" within the meaning of Item 4(b). In
connection with the preparation of the financial statements

accordance with generally accepted auditing standards. For
example, there are no independent confirmation, substantia-
tion or other audit procedures performed in connection with
a "review." Additionally, no opinion was rendered by the
accountants with respect to any of the Company's financial

we do not believe that such uncertified and unaudited finan-
cial statements constitute an "annual audit report" for
purposes of Item 4(b) or that such financial statements
would be acceptable annual audited financial statements for
SEC and other regulatory purposes.

Second, we believe that the Company does not have
an "annual report" within the meaning of Item 4(b). Bare

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financial statements which have merely been reviewed by an independent accounting firm and contain no additional information or analysis regarding the Company's results of operations for the year in question are not an "annual report" that is required to be filed in response to Item 4(b). We have searched the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"), the Hart-Scott-Rodino regulations, 16 CFR §§ 801.1 et seq. (the "Rules") and the Statement of Basis and Purpose ("SBP") for guidance, but the term "annual report" is nowhere defined in these sources.

than a year-end balance sheet and income statement. For

descriptions of the company's business, properties, legal proceedings, executive compensation, dividend policy, selected financial data and a "management's discussion and analysis" thereof, etc. In the insurance industry, a regulated insurance company must submit an annual statement or report to the applicable state insurance commissioner which

relating to reserves, operations by lines of business and schedules of investments held. Similarly, the Federal Reserve's annual report for bank holding companies also requires substantial information in addition to a year-end balance sheet and income statement. Further, under recently pro-

"annual report" to the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor. This annual report must contain (i) annual financial statements; (ii) a statement of management's responsibility for prepar-

the effectiveness of the internal controls on financial reporting and compliance. In addition, the financial statements required to be filed in the FDIC annual report must be

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utilities must also file annual reports with the applicable

Moreover, the language of the SBP, § 801.11 of the Rules and the Instructions to Item 4(b) of the Form suggest that an annual statement of income and expense, which may be

the person is certain that the Act either does or does not apply. 43 Fed. Reg. 33472 (July 31, 1978). Based on the Company's total assets, as reflected on its consolidated balance sheet, there is no question that the Size-of-Person threshold is met and the Act does apply in this case. Furthermore, the SBP continues: "None of the items on the notification and report form requires a statement of the annual net sales or total assets of either party."

... This is true even when the statement of the annual net sales is the result of a recomputation required under § 801.11(b).

Thus, even when an annual statement of income and

annual report. The SBP states explicitly: "Note that neither the financial statements required by [Rule 801.11], nor the restatements directed by paragraph (b) must necessarily be submitted as such in response to the Notification and Report Form. Item 4 of the form explains in detail which documents must be submitted." 43 Fed. Reg. 33473 (July 31, 1978). Accordingly, unless an annual statement of income

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and expense is part of an "annual report" or "annual audit

guage of the Act, Rules and SBP suggest that a bare year-end "reviewed" financial statement that includes a balance sheet and income statement is not an "annual report" for purposes of Item 4(b) of the Form.

For the above reasons, we believe that, in the circumstances described, Item 4(b) requires that the Company submit only its most recent regularly prepared balance sheet since it does not have an "annual report" or "annual audit report" and that by submitting its most recent regularly prepared balance sheet it would be in compliance with the

discretion, may submit additional materials to facilitate or expedite review, such additional materials are not required to be submitted by Item 4(b) in the circumstances described herein. Please call me at [redacted] to confirm whether or not the staff agrees with this understanding.

[redacted]

11/23/92 - called [redacted] advised that the PHN office advised that the [redacted] annual financial statement

reviewed by auditors. [redacted] have them classified as an "annual report" of the Company, which is [redacted] watch held. RPB Smith