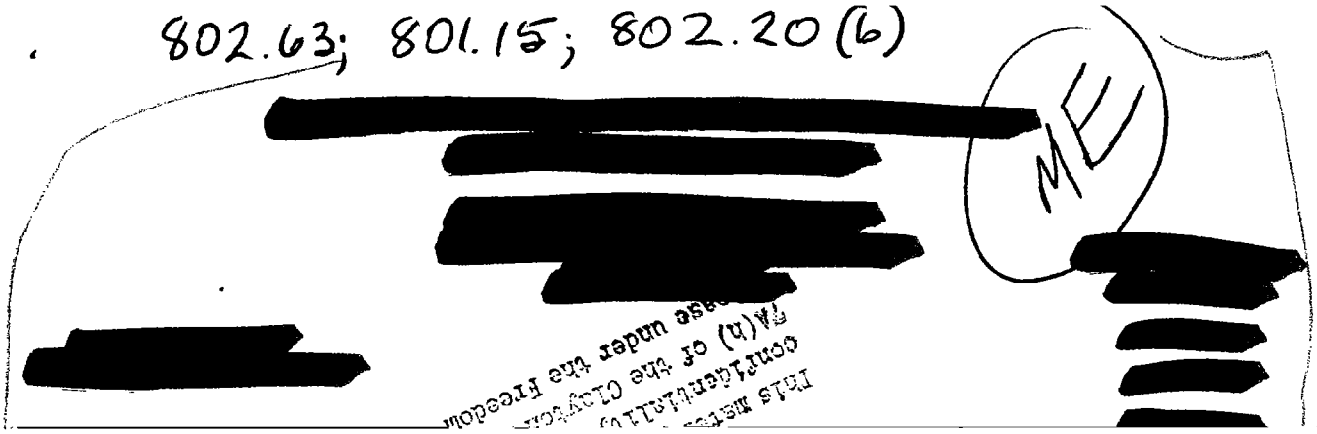
802.63; 801.15; 802.20(6)



VIA TELECOPIER (202) 326-2050
AND FEDERAL EXPRESS

Ms. Melea Epps
Premerger Notification Office
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Confirmation of Exemption from Requirement to File

Dear Ms. Epps:

In connection with the transactions described below, we have discussed with you on December 2, 1994 the following material facts and analysis of the applicable rules, regulations, statements and interpretations under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). Pursuant to our

In accordance with your suggestion, we are writing this letter to memorialize our conversation and, if we are not notified by you within the next five business days to the contrary, we will assume that the positions reflected in this letter are correct. All capitalized terms used but not otherwise

defined in this letter have the meanings set forth in the rules promulgated under the Act (the "Rules").

provisions of the Act and the Rules and the positions expressed by the staff which we have discussed with you and which we believe to be applicable to the transactions described in this letter.

B. FACTS

Generally, please assume for purposes of this letter that the tests set forth in Section 7A(a)(1) and (2) of the Act are met.

1. Transaction 1: Initial Acquisition of Notes

The transaction described below in this paragraph 1 is referred to in this letter as "Transaction 1."

A United States , whose Ultimate Parent Entity is a Foreign Person, purchased notes (the "Notes") of a United States Issuer (the "Issuer") solely for the purpose of investment in a bona fide credit transaction entered into in the ordinary course of the business. At the time of such purchase, the Issuer of the Notes

Subsequently (three years and six months after the initial purchase of the Notes), the Issuer and its parent company, a United States Person ("Parent"), filed for protection under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy

would be converted on the effective date of the plan into

provisions was confirmed on and the effective date of the Plan (the "Effective Date") is anticipated to occur prior to (and possibly as early as ,

[redacted]

As a result of the conversion of the Notes into Voting Securities of the Issuer on the Effective Date pursuant to the Plan, the [redacted] will become the largest single holder of Voting Securities of the Issuer. The [redacted] will be an aggregate amount of Voting Securities of the Issuer in excess of $15 million.

In anticipation of such result, during the Bankruptcy Proceedings, the [redacted] actively sought to protect its anticipated interest as a holder of Voting Securities by insuring that it will appoint directors to the board of directors of the Issuer and otherwise participate in the formulation, determination, or direction of the basic business decisions of the Issuer. Such actions have been solely in response to its anticipated treatment under the Plan. It should be noted that the Plan as confirmed restricts the [redacted] until the Issuer's 1997 annual meeting from controlling the board of directors by virtue of various provisions limiting the [redacted]

2. [redacted] Securities.

The transaction described below in this paragraph 2 is referred to in this letter as "Transaction 2."

During the Bankruptcy Proceedings, the [redacted] acquired the right to receive from a third party certain convertible preferred stock of the Parent and debt of the Parent and the Issuer (or the proceeds thereof, being Voting Securities of the Issuer). Pursuant to the Plan, on the Effective Date [redacted] may occur after the Effective Date so that the [redacted] will actually receive Voting Securities of the Issuer. However, if the actual transfer occurs prior to the conclusions in this letter given the pendency of the Issuer's Bankruptcy Proceedings.

The amount of the Voting Securities so acquired will equal approximately 2% of the voting securities of the Issuer. The [redacted] Issuer)).

[redacted]

On the other hand, if combined with the Voting Securities received pursuant to Transaction 1, the would have an aggregate of approximately 41.7% of Voting Securities of the Issuer, which would be an aggregate total amount of Voting

referred to in this letter as "Transaction 3."

The is considering making open market purchases from time to time after the Effective Date [within one year of the Effective Date] of Voting Securities of the Issuer 20(b)

would need to acquire approximately an additional 8.4% of the Voting Securities of the Issuer, the aggregate total amount of which the anticipates will be less than $15 million.

Even if these open market purchases were to be aggregated with the Voting Securities acquired in Transaction 2, the anticipates that the aggregate total amount of the Voting Securities of the Issuer held by the

C. CONCLUSIONS.

1. **Transaction 1.**

Based upon the foregoing, we believe that Transaction 1

2. **Transaction 2.**

As a result of Transaction 2 alone, the would hold only 2% of the Voting Securities and the aggregate total amount of Voting Securities would not be in excess of $15 million. This transaction alone would not meet the test in

[redacted]

Section 7A(3) of the Act. Accordingly, no HSR Form would be required upon the acquisition of the voting securities as [redacted]

Transaction 1 would not be aggregated with those acquired in subsequent Transaction 2.

Although Transaction 1 alone would also be exempt under [redacted]

been or are being acquired" in connection with such transactions. Accordingly, the [redacted] would be relying on the exemptions provided by Rules 802.63(a) and 801.15(a)(2) to support its conclusion that an HSR Form is not required to be filed as a result of Transactions 1 and 2.

3. **Transaction 3.**

For the same reasons described above with respect to Transaction 2, no HSR Form will be required to be filed in connection with Transaction 3. This conclusion will be correct only to the extent that in Transaction 3 the [redacted] acquires additional Voting Securities of the Issuer which when aggregated with the Voting Securities acquired in Transaction 2 do not equal or exceed 15% of the Voting Securities of the Issuer [redacted] Securities acquired in Transactions 2 and 3 must be aggregated.

4. **Transactions 1, 2 and 3.**

[redacted]

described in Transactions 2 and 3.

* * *

[redacted]

Transaction 3 are incorrect, please so advise us [redacted]

[redacted]

[redacted]

As discussed above, please do not hesitate to contact the undersigned at [redacted].

[redacted]

no HSR Form filing is required pursuant to the Act and the Rules as a result of the transactions described in this letter.

[redacted]

(8/7) Discussed w/ Dick Smith, who raised the 802.20 issue. Called [redacted] and told her that in transaction 3, if the [redacted] makes a stock [redacted] of 50% or more of the Issuer, then that acquisition may be reportable pursuant to 802.20(6) if the Issuer has sales or assets of $25 MM or more.

[redacted]

APPENDIX A

APPLICABLE PROVISIONS OF THE ACT AND RULES

1. **Section 7A(a).**

Section 7A(a) of the Act provides, in relevant part:

> "Except as exempted pursuant to subsection (c) of this section, no person shall acquire, directly or indirectly, any voting securities . . . of any other person, unless both persons . . . file notification . . . , if --
>
> (3) as a result of such acquisition, the acquiring person would hold --
>
> (A) [redacted] securities or assets of the acquired person, or
>
> (B) an aggregate total amount of the voting securities and assets of the acquired person in excess of $15,000,000."

2. **Sections 7A(c)(11)(A) and (12).**

Sections 7A(c)(11)(A) and (12) of the Act provide exemptions from the requirements of Section 7A for:

> "(11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company or [redacted] of (A) voting securities pursuant to a plan of reorganization or dissolution . . . ; and
>
> (12) such other acquisitions, transfers, or transactions, as may be exempted under subsection [redacted]

3. **Section 7A(d)(2)(B) of the Act; Rule 802.63.**

Pursuant to Section 7A(d)(2)(B) of the Act, Rule 802.63

[redacted]

. or in connection with a bona fide debt work-out shall be exempt from the requirements of the act if made by a

[redacted]