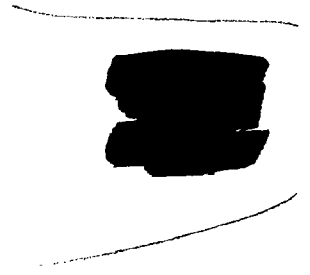


801.11 ; 802.20 (b)



January 11, 1995

VIA FACSIMILE

Richard B. Smith, Esq.
Premerger Notification Office
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Determining Whether a New Balance Sheet is Regularly Prepared for Purposes of Rule 802.20(b)

Dear Richard:

I am writing to confirm our telephone conversation on Monday, January 9, 1995, in which you advised me that the transaction described below would not be subject to the notification and reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a.

B for less than \$15 million. B currently has a minority interest in Partnership P. Prior to the

interest is being acquired in partial satisfaction of a loan made by B's parent to the partnership.

Under Rule 802.20(b) of the premerger rules, an acquisition of voting securities for \$15 million or less is exempt from USD filing requirements if it will not confer control of an issuer that, together with any other entities it controls, has annual net sales or assets of \$25 million or more.

aggregate P's total assets and annual net sales with its own total assets and annual net sales for purposes of determining whether the \$25 million threshold in Rule 802.20(b) has been met or exceeded. See 16 C.F.R. § 801.110(d); ABA Premerger Notification Practice Manual (1994).

[REDACTED]

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Based on their existing, most recent regularly prepared balance sheets, B and P would have annual net sales of well under \$25 million, but would have total assets of more than \$30 million. However, prior to consummation of the sale of B's voting securities to A, B intends to prepare a new consolidated balance sheet and other financial statements that will reflect its acquisition of a controlling interest in P. On these new financial statements, the value of P's assets will be written down considerably, so that the total assets and annual net sales shown each will be less than \$25 million.

The new balance sheet will be as of December 31, 1994, which is the end of B's normal fiscal year. Although B usually would not prepare its annual financial statements until at least

securities to A. As part of the sale, B's parent will be required to warrant to A as to the accuracy of B's financial statements. The total asset value listed on P's existing balance sheet

made a few years ago concerning P's business prospects. B already had advised that this

interest in P, and that will more accurately reflect the value of P's assets.

On Monday, January 9, 1995, I called you and asked whether, for purposes of determining whether B is entitled to the exemption in Rule 802.20(b), B could rely on its new balance sheet, or would be required to rely on the existing balance sheets of B and P. Under the HSR Rules, the total assets of a person are as stated on that person's most recent, regularly prepared balance sheet. 16 C.F.R. § 801.11(c)(2). You stated that the new balance sheet would qualify as B's most recent regularly prepared balance sheet for HSR purposes because it was being prepared with respect to B's normal fiscal year, and because it was reasonable for B to create a new consolidated balance sheet to reflect its acquisition of a controlling interest in P. You further stated that the fact that B's new balance sheet would be prepared this year

Based on B's new most recent regularly prepared balance sheet, its total assets and annual net sales each will be less than \$25 million. Thus, under Rule 802.20(b), A's acquisition of B's voting securities will be exempt from HSR filing requirements.

[REDACTED]

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Please call me at the number above to confirm that you agree with the advice reflected

in this letter.

Sincerely,

[REDACTED]

1/20/95 Called writer and advised that a bona fide
to reflect their value on 12/31/94,

of the conclusion of a new [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Financials in January [REDACTED] [REDACTED] [REDACTED] [REDACTED]

The financials are not regularly prepared. However,
gap between what is usual and what is now being done could
lead to a different conclusion.

R.B. Smith