

801.40-801.2-802.9-802.30

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FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE

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March 6, 1996

Via Facsimile
Richard B. Smith
Premerger Notification Office
Room 303
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.

Dear Mr. Smith:

I am writing to you to confirm your conclusions regarding the appropriate Hart-Scott-Rodino analysis of a transaction I described to you by telephone on March 4, 1996.

As you recall, I told you that A, a non-profit company, owns 80% of the voting securities of B, a for-profit corporation. The remaining 20% of B's voting securities are publicly owned. A is its own ultimate parent entity. As part of the recapitalization of B, the parties are planning to undertake the following steps.

Step One: A will convert to a for-profit corporation and will

Step Two: B will associate the new company with A and

exchange their stock in B for stock in AD.

[REDACTED]

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I understand that this transaction would not be evaluated as the formation of a joint venture corporation under 16 C.F.R. § 801.40. Instead, it would be evaluated as the merger of A and B.

person because the intraperson exemption of 16 C.F.R. § 802.30 would apply. Under this exemption, a person need not report its acquisition of voting securities or assets if that person is both the acquiring and acquired person by virtue of its holdings of voting securities. In my hypothetical, with respect to A1's acquisition of voting securities of AB, and AB's acquisition of assets from A1, A1 is both the acquired and acquiring person by virtue of holdings of over 50% of the voting securities of A, B, and AB.

I understand that the only entities with a possible reporting obligation as acquiring persons are the shareholders other than A1 who will acquire voting securities of AB. No shareholder, other than A1, however, will hold more than 10% of AB's voting securities. Even if a shareholder (other than A1) would hold in excess

management of AB.

If this letter does not accurately reflect your analysis of the hypothetical I posed to you, please call me as soon as possible. Thanks, once again, for your help.

Sincerely,

Enclosures

2/7/91 - Advised writer that only possible reportable event is taking of AB shares which held 20% of B. If each such shareholder will take 10% or less of AB's voting stock and will be a purely passive investor in AB, then 802.9 can be used since A, B are both + 10% in Foundation & Foundation will control A/B after merger with B's shareholders. RBS will