

See attached report

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802.506  
802.51(b)(1)  
802.51(b)(2)

[REDACTED]

[REDACTED]

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MARCH 20 1996  
C-33-11-30

March 20, 1996

**By Hand**

Mr. Victor Cohen  
Bureau of Competition  
Room 303  
Federal Trade Commission  
6th Street & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Dear Mr. Cohen:

This letter follows our conversation of March 8, 1996 concerning certain issues arising under 16 C.F.R. §§ 802.50 and 802.51.

**Factual Circumstances**

The facts as discussed with you were as follows. Company A is a U.S. issuer and indirectly

owns 100 percent of the shares of Company B, which is a U.S. issuer. Company B also owns 100 percent of the shares of Company E which is a U.S. issuer.

Company F has foreign assets possibly exceeding \$15 million in value. For purposes of this inquiry, it is assumed that Company E has foreign assets exceeding \$15 million.

Based on the facts set forth above, we discussed two possible scenarios with you on March 14, 1996.

The first scenario was that all of the shares of Company B would be held by a U.S. issuer. Mr.

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Mr. Victor Cohen  
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because Company B (including all entities it controls) does not hold assets located in the United

The second scenario was that all of the shares of Company B would be sold to a foreign purchaser  
800-1111-78 802.51(b) because it would not confer control of an issuer with assets located in the U.S. having

sales or assets of any foreign issuer which the U.S. issuer controls (in the case we discussed, the sales or assets of Company F). On the other hand, in making the calculations required by 16 C.F.R. § 802.51(b)(2), I understand that the sales or assets of other U.S. issuers controlled by a U.S. issuer, if there are any (in the case we discussed Company E controlled no other U.S. issuer), would be aggregated with those of the controlling U.S. issuer. 802.51

Subsequent to our discussion, I learned that the facts were somewhat different than as set forth above and as I had described in my conversation with you: specifically, during 1995, Company

shares of Company G (and thus its direct and indirect holdings in Companies H through J) were transferred to another subsidiary of A, Company K, which is outside of the ownership chain of relevance for purposes of any sale of Company B stock, such chain being Company A to Company B to Companies C, D, E and F. The current ownership structure is reflected in the enclosed chart. Since any current U.S. or foreign purchaser of Company B's stock would not hold, as a result of the acquisition, voting securities of any company that presently has annual sales in or into the U.S. in excess of \$25 million, my understanding is that any such U.S. or foreign purchaser's acquisition of all of the shares of Company B would still be exempt under 16 C.F.R. §§ 802.50(b) and 802.51(b).

enclosed).

Finally, we discussed a third possible scenario under which all of the shares of Company E, rather than Company B, are sold to either a domestic or foreign purchaser for a price in excess of \$15 million. My understanding is that the exemptions set forth in 16 C.F.R. §§ 802.50 and 802.51 are

J, which generated 1995 sales in the U.S. in excess of \$15 million.

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not available since they do not apply to the acquisition of shares of U.S. issuers; thus the transaction would necessitate an HSR filing unless another exemption is available.

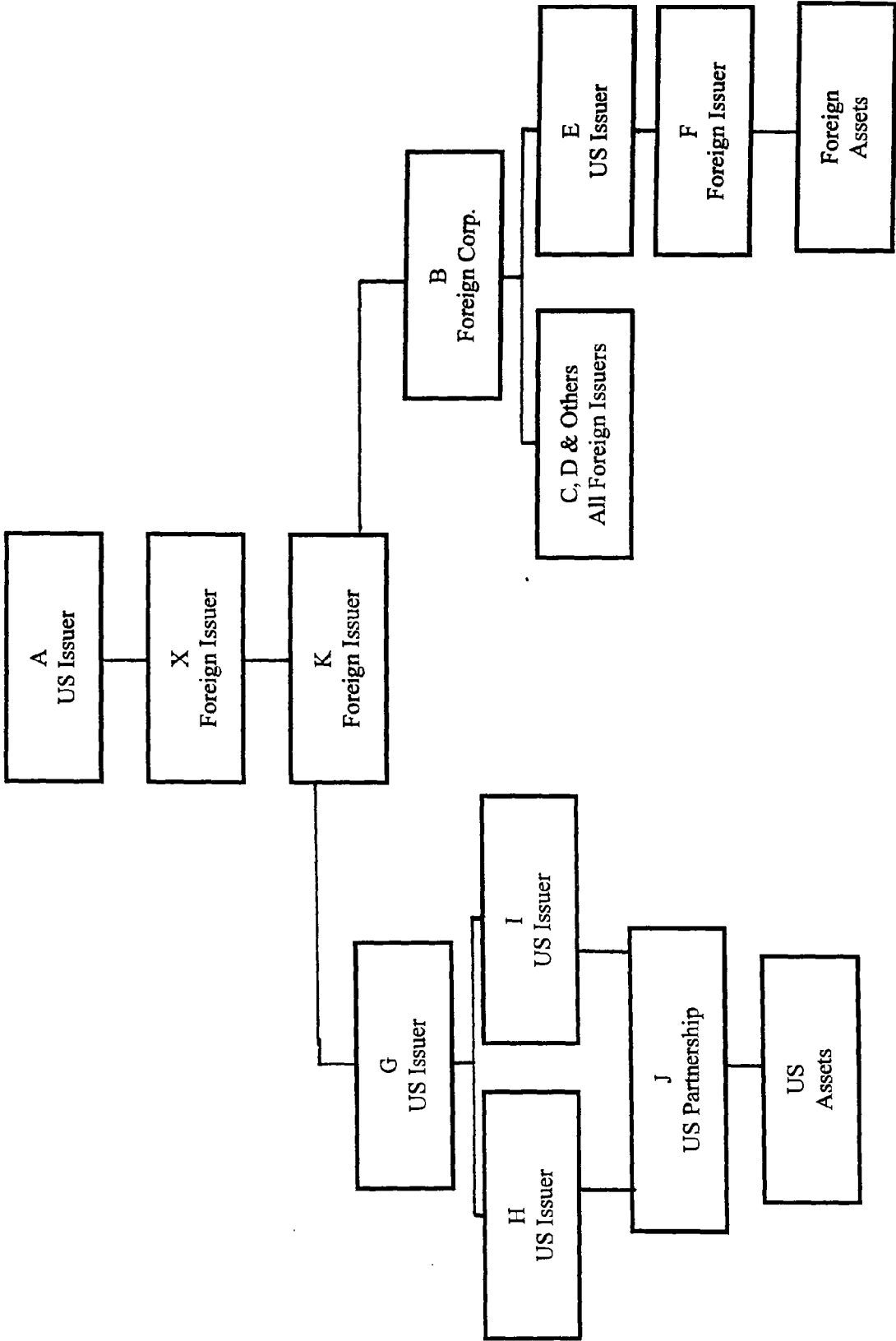
If you disagree with any of the understandings I have outlined above, including most particularly the understanding based on paragraph 268 of the Premarmer Notification Practice Manual, please let me know as soon as possible.

Thank you very much for your assistance in connection with this matter.

Sincerely yours,

A large, solid black rectangular redaction covers the signature and name of the sender.

Enclosures



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tly inconsis-

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Applicable subsection of the rules. § 802.50(b)(2).

**Brief statement of the question or problem.** Whether the acquisition by a U.S. person of voting securities of a foreign issuer is exempt pursuant to § 802.50(b)(2). The foreign issuer had U.S. sales in excess of \$25 million during its most recent fiscal year, but it has since sold the division that accounted for nearly all of its U.S. sales.

be exempt under § 802.50(b)(2) because the U.S. person would not hold, as a result of the acquisition, voting securities of a company that currently has more

801.15(h)

percent of the  
large foreign

documents pertaining to this issue. Letter to Matthew Seaman, dated January 22, 1985.

**Comments.** This interpretation is consistent with the language of

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2.50(h) condi-

**Interpretation and discussion.** The staff required a full factual analysis of the varying locations and uses of the movable asset, in this case cruise ships, to determine whether the asset should be deemed to "be located in the United States."

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owned the assets, but also to the source of the revenues generated by the movable assets. In the case of cruise ships which frequently called on U.S. ports and for which tickets were sold almost exclusively in the United States, the assets

ship and registry of the ship were foreign, that the captain and most of the crew were foreign, and that a substantial majority of the time the ships were located

August 14, 1986

RESPONSE

Pursuant to section 802.51(b) an acquisition by a foreign person of the voting stock of a foreign issuer is exempt from HSR reporting requirements if such an acquisition does not confer control of (section 802.51(b)(1)) an issuer which holds assets located in the US having an aggregate book value of \$15MM or more, or (section 802.51(b)(2)) a US issuer with annual net sales or total assets of \$25MM or more. Where the foreign person is acquiring more than one issuer

(and assets under their control) must be aggregated to see if the \$15MM test is met. If the amount is \$15MM or more the exemption is lost. In regard to 802.51(b)(2) aggregation of only US issuers's sales and assets is required and if the amount of sales or assets is \$25MM or more

and sales of the US issuers it controls should be included in the aggregation and not the sales

fact that 802.51(b)(2) looks at only US issuers whereas 802.51(b)(1) looks at all issuers. Note also that 802.51(b) is listed in the aggregation rule 801.15(b) which results in a loss of the exemption once the threshold of 802.51(b) has been exceeded.

The other issues raised in the letter were resolved correctly.

P.S. IS agree with the 802.51 discussion