

7A(c)(7); 7A(c)(8); 7A(c)(9); 802.9

[REDACTED]

Writer's Direct Dial: (202) 974-1520

February 4, 1999

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE
1999 FEB -11 A 9:34

VIA FACSIMILE

Confidential Treatment Requested

Richard B. Smith, Esq.
Premerger Notification Office
Federal Trade Commission
Sixth & Pennsylvania Avenue, N.W.
Washington, D.C.

Dear Dick:

We are writing to follow up on our call of yesterday regarding the applicability of the "solely for the purpose of investment" exemption,¹ to the proposed acquisition by our client, [REDACTED] of up to 4.9% of the voting securities of [REDACTED]. We believe that this exemption is available due to restrictions imposed by the Bank Holding Company Act of 1956, as amended (the "BHCA"), that require [REDACTED].

Background

We informed you that [REDACTED] has publicly announced that it has entered into an agreement to acquire 100% of the voting securities of [REDACTED] through a merger (the

¹ 15 U.S.C. § 18a(c)(9); 16 C.F.R. § 802.9. See also 16 C.F.R. § 801(i)(1).

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"Merger"). As we stated, completion of the Merger is conditioned on prior approval by the Board of Governors of the Federal Reserve System (the "FRB") under §3 and §4 of the BHCA.² The statutory HSR exemptions for transactions requiring agency approval under §3 and §4 of the BHCA will thus apply to the Merger.³

The parties currently anticipate that the Merger will not be completed until approximately April or May, however. In the interim, [REDACTED] desires to purchase up to 4.9% of the voting securities of [REDACTED]. The motivation for this investment is purely financial -- [REDACTED] stock is currently trading at a significant discount to the price that [REDACTED] would otherwise ultimately be required to pay at the completion of the Merger. [REDACTED] has no

Bank Holding Company Act Restrictions on Deutsche Bank

Under the BHCA, [REDACTED] may not directly or indirectly own or control more than 5% of the voting shares of a bank, or "control" a bank or bank holding company, regardless of the size of its share ownership,⁴ without the prior approval of the FRB. The FRB presumes that a less than 5% voting interest will not require FRB approval,⁵ provided that the investment is "passive" and the investor does not have a "controlling influence" over the management or policies of the bank or bank holding company.⁶ Thus, [REDACTED] is required by the BHCA to treat this 4.9% interest in BT as a passive investment.

² 12 U.S.C. §§ 1842-43.

³ See 15 U.S.C. § 18a(c)(7)-(8).

⁴ See 12 U.S.C. § 1842(a)(3).

⁵ See 12 U.S.C. §§ 1842(a)(1), 1841(a)(1).

⁶ See 12 U.S.C. § 1841(a)(3); see also 12 C.F.R. § 225.31(e)(1).

⁷ 12 U.S.C. § 1841(a)(3)(C); see also 12 C.F.R. § 225.31(f) (guidelines for granting

holding company's voting shares of between 5 and 25% must first obtain FRB approval. 12 U.S.C. § 1842(a)(3). The presumption of passivity applicable below 5% does not apply between 5 and 25%, and in granting such approvals, the FRB requires applicants to agree to extensive and detailed commitments to ensure that the investment remains

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Analysis

We informed you of our view that [REDACTED] acquisition of up to a 4.9% interest in [REDACTED] should be exempt under the "solely for the purpose of investment" exemption. [REDACTED] has no intention of participating in the formulation, determination, or direction of [REDACTED] through this 4.9% investment. Moreover, [REDACTED] is required by the BIICA to act as a passive investor with respect to this purchase. [REDACTED] Accordingly, we believe that these unique statutory

[REDACTED] to this matter and wanted to thank you for returning

2/4/99 - Copied letter to [REDACTED] He checked with [REDACTED] and the DOJ.
Franklin Division. View was that since intent of [REDACTED] Very truly yours,
[REDACTED] to acquire BT, the present [REDACTED]
intent of the 4.9% is investment. The sale intent is buy BT, which makes any reportable
purchase of 4.9% reportable. Consistent with [REDACTED]
ROA # 37-33. So advised writer. I agree with DOJ news.
RBS/Smith

(continued...)

passive. See e.g. Banco Santander S.A. 81 Fed. Reg. Bull. 1139, 1143 (1995). The

& Prager treatise takes the position at page 6-58 that the agency approval exemptions would not be applicable to such partial acquisitions prior to the granting of the appropriate agency approvals.