

801.1(9)(3)

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JUN 15 11:28 AM '99

FEDERAL TRADE COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

June 15, 1999

BY FACSIMILE AND FIRST-CLASS MAIL

Mr. Richard B. Smith  
Premerger Notification Office  
Bureau of Competition  
Room H-323  
Federal Trade Commission  
5th Street & Pennsylvania Avenue, N.W.

Dear Mr. Smith:

securities in May 1996 and \$1 million worth of securities in June 1997. The Act and regulations were not applicable to these acquisitions. One of the terms and conditions attached to the convertible preferred securities (at the insistence of the start up company) was that if the start up company ever engaged in an initial public offering, the convertible preferred securities would automatically become voting common stock in the company. The start up company has now decided to engage in an initial public offering. If that offering takes place, our client's convertible preferred securities will automatically be

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After we discussed this factual situation, you referred me to page 33463 of the original Statement of Work and Business and its discussion of automatic

801.1(f)(1), for "voting securities" and that an exchange, as opposed to automatic maturation of inchoate rights, must take place to effect conversion." Inasmuch as the client's convertible preferred securities automatically convert into voting common stock when the initial public offering is effected, without the client doing anything or being able to control the conversion, it appears that the "automatic maturation of inchoate rights" language controls the situation and that no filing under the Act and regulations is required by our client in this situation.

public offering that will trigger the transformation of the convertible preferred securities

I also note that you telephoned me after our initial conversation to discuss a situation in which an acquirer acquired convertible preferred securities while aware that an initial public offering would soon convert those shares into voting common stock.

consequently, it would appear that the situation discussed in our previous conversation is different from, and is inapplicable to, our client's situation. Once again, if you disagree, I would appreciate you letting me know.

Thank you for your attention to this matter. The client and I very much

6/15/99 - Advised writer that this was not a conversion and that the filing would be made by the client.

Attended conversion meeting with client and with counsel