

[REDACTED]

801.10(c)(1)(ii) June 25, 1999

Via Facsimile

Richard B. Smith, Esq.
Federal Trade Commission
Premerger Notification Office -
Bureau of Competition - Room 303
Sixth Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Dick:

[REDACTED]

(the "Act") and the regulations promulgated thereunder (the "Rules").

Company A, a publicly traded company, proposes to acquire by merger
Company B, a private company. On May 5, 1999, Company A and Company B

common stock of Company B. After signing the Letter of Intent, Company A, as
acquiring person, and C, as ultimate parent of Company B, filed notification under

The parties since then mutually agreed that the consideration to be paid

[REDACTED]

[REDACTED]

Richard B. Smith

voting securities of Company A.

The value of the voting securities to be acquired in this instance is the

of the acquisition but not earlier than the date prior to the execution of the contract, agreement in principle or letter of intent to merge or acquire."

You have advised that in instances where a letter of intent is followed by a definitive agreement, Rule 801.10(c)(1)(ii) allows the 45-day (or shorter) period prior to closing to run back to the earlier of (i) the date prior to the signing of the letter of intent or (ii) the date prior to the signing of the definitive agreement.

The closing quotation on the NASDAQ National Market for the common shares of Company A on May 17, 1999 (a date within 45 days prior to the closing date of the proposed transaction) multiplied by the number of shares to be received by C equals approximately \$14,095,000. Thus, the acquisition by C of voting securities of Company A does not meet the size-of-transaction test of the Act.

If the foregoing in any way fails to accurately reflect your advice, please call me at [redacted] soon as possible.

Very truly yours,

[Redacted signature]

6/28/99 Advised writer that advice given was based upon 7/31/78 SBP at 3.3470 where Commission states that clause (ii) applies to the day before execution of "any" contract, agreement principle or letter of intent to merge or acquire. R.B. Smith