

MEMORANDUM

Direct Line

801.2(d)

801.2(e)

TO: Michael Verne
FTC Premerger Notification Staff

FROM:

DATE: October 21, 1999

RE: HSR to disclose Recipients of Subsidiary Corporation's Stock Have to Make HSR

Our client, [redacted], intends to acquire through merger a smaller entity, [redacted] Corporation. [redacted] will file HSR notifications. In order to avoid triggering default provisions in [redacted] debt instruments, [redacted] will merge into [redacted], which will survive under state corporation law. The surviving corporation will immediately be renamed [redacted]. [redacted] existing board of nine directors, with the addition of two directors from [redacted] will govern the surviving corporation. [redacted] independent directors, who shall receive in excess of \$15 million in the surviving corporation's stock, have to file HSRs as

Section 801.2(d)(1)(ii) of the HSR regulations states:

In a merger, the person which, after consummation, will include the corporation in existence prior to consummation which is designated as the surviving corporation in the plan, agreement, or certificate of merger required to be filed with state authorities to effectuate the transaction shall be deemed to have made an acquisition of voting securities.

Section 801.2(d)(2)(i) states:

any person party to a merger or consolidation is an

Lastly, § 801.2(e) states:

Whenever voting securities or assets are to be acquired from an acquiring person in connection with an acquisition, the acquisition of voting securities or assets shall be separately subject to the act.

While the regulations appear to make pivotal which corporation survives under the documents filed with state authorities, this leads to a bizarre result when the name and control of the nominally disappearing corporation are transferred to the surviving corporation. Three or four individual shareholders, whose company is making an acquisition, would be required because of the mechanics of corporate law each to pay a \$45,000 fee and file an HSR

YES - They ARE ACQUIRING VOTING SECURITIES
OF A NEW ISSUER (CONRING ASSR / BARRA),
NOT VOTING SECURITIES OF A "SUCCESSOR"
TO [REDACTED] N OVURA AGMES

[Handwritten Signature]

10/21/97