

[REDACTED]

Attorneys at Law

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TELEPHONIC FACSIMILE [REDACTED]

[REDACTED]

February 1, 2000 *Item 5 of Form*
Rule 803

VIA FAX (202) 326-2624
Alice M. Villavicencio, Esquire
Federal Trade Commission
6th and Pennsylvania Aves., N.W.
Washington, D.C. 20580

Dear Alice:

This letter sets forth my understanding of our phone conversations over the past few weeks on the following HSR filing issues.

1. Suppose that a U.S. subsidiary of a foreign acquiring person manufactures a product in the U.S. and sells it both domestically and to countries outside the U.S. The acquiring person should report the revenues from both the domestic and foreign sales of the product in answering Items 5(a) and 5(b). On the other hand, assume that the U.S. subsidiary receives a product from the foreign affiliate and then sells it without transforming or altering it to persons outside and inside the U.S. Only the sales to persons within the U.S. would be reported, and they would be reported as wholesale revenues only.

2. Suppose that a U.S. subsidiary or division of a foreign acquiring person receives a product manufactured outside the U.S. by another division of the acquiring person. If the U.S. subsidiary then sells the product in the U.S. to a wholesale outlet (or to a doctor's office which then sells the product at retail to a patient), without altering or transforming it, the revenue from the sale should be reported as a wholesaling activity.

If the U.S. subsidiary transforms or treats the product before selling it, the revenue from the U.S. subsidiary's sale of

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the product should be reported as a manufacturing activity. Whether that same manufacturing revenue also must be reported as wholesale revenue depends on the person to whom it is sold. If the manufactured product is not sold to the ultimate consumer, the revenue is also deemed to be wholesale revenue. Thus, if the manufactured product is sold to a wholesale firm or to a doctor's office which then resells the product at retail, the revenue is deemed wholesale.

If most of the U.S. subsidiary's revenues (from one location) are derived from the manufacturing process (as opposed to wholesale sales); all revenue should be reported as manufacturing revenue. If most of the U.S. subsidiary's revenues from that location are wholesale, the wholesale revenues should be reported separately from the manufacturing revenues.

What this means is that the same revenue may have to be reported in Item 5(b)(iii) under a manufacturing code and in Item 5(c) under a wholesale code.

I would greatly appreciate your calling me to confirm whether my understanding on these matters is correct.

Thank you again for all your help.

Very truly yours,
[REDACTED]

By [REDACTED]

Called White on Feb. 7, 2000. Her conclusions re: Item 5 of the form are correct. Ann