

801.40  
7A(c)(10)

April 7, 2000

Memorandum  
to  
Mr. Verne

(c)(10) Exemption

I am writing to confirm the substance of the telephone conversations that we had yesterday, Thursday, April 6, 2000, concerning the number of Notifications that must be submitted and the persons obligated to submit them, under the Hart-Scott-Rodino Antitrust Improvements Act (the "Act") and the rules promulgated thereunder with respect to the transaction described below.

**Formation of Acquisition Vehicle.** A corporation ("Acquisition") will be formed by several investors, one of whom ("Parent") will hold over 50% of the outstanding voting securities of Acquisition. For the purpose of the analysis, assume that Parent and one other investor ("Co-investor") will meet the size-of-person and size-of-transaction tests under the Act concerning their respective investments in Acquisition. In addition, Acquisition is a good joint venture corporation for the purposes of 16 CFR 801.40 (Formation of Joint Venture or Other Corporations). You and I agreed that each of Parent and Co-investor would be subject to the notification requirements under the Act regarding their respective investments in Acquisition.

**Merger (and Recapitalization).** It is intended that Acquisition merge (the "Merger") with and into a corporation ("Target") and that the Merger be recorded as a

recapitalization for financial reporting purposes. Following the Merger, the separate existence of Acquisition shall cease and Target shall continue as the surviving corporation ("Surviving Corporation") under its current name. At the effective time of the Merger, each share of capital stock of Acquisition shall be converted into a share of capital stock of the Surviving Corporation ("Surviving Corporation Common Stock"). Each share of the capital stock of Target that is outstanding immediately prior to the effective time of the Merger shall be converted into: (i) for each such share of capital stock with respect to which an election to retain such share has been made, the right to retain one share of Surviving Corporation Common Stock (a "Retained Share"); and (ii) for each share of capital stock, other than Retained Shares, the right to receive a certain sum in cash. It is a condition to the Merger that the aggregate number of shares that may be retained as Retained Shares shall be no more than 25% and no less than 7% of the issued and outstanding shares of capital stock of Target immediately prior to the effective time of the Merger.

At the effective time of the Merger, Parent will hold over 50% of the voting securities of the Surviving Corporation (although Parent will hold a smaller percentage of the outstanding voting securities of the Surviving Corporation than it held of Acquisition). Similarly, Co-investor will remain a significant stockholder of the Surviving Corporation, but its percentage interest of the Surviving Corporation will be less than its percentage interest had been in Acquisition.

During our telephone conversations, you concluded (i) that each of Parent and Co-investor have reporting obligations under the Act with respect to the formation of Acquisition, (ii) that the Surviving Corporation would be seen as a successor corporation to Acquisition and (iii) on the basis of a continuum theory and the exemptions set forth in 15 USC §18a(c)(10) (Exempt transactions), no additional filings under the Act would be required by either of Parent, Co-investor or on behalf of Target. If after reviewing this memorandum, you are unable to sustain the foregoing conclusions with respect to the number of filings required under the Act and the parties obligated to submit them, I would appreciate your calling me as soon as you are able to do so (at [redacted]).

Thank you for the prompt attention that you have given this matter.

[redacted]  
AGREE. ACQUISITION OF VLS OF SUCCESSOR CORPORATION PRO DATA TO HOLDINGS IN NEWCO IS EXEMPT UNDER C(10). NOTE THAT THIS WOULD PRODUCE A DIFFERENT RESULT IN TARGET WERE A SUBSIDIARY OF Aquisition POST-MERGER. OR DISAPPEAR INTO ACQUISITION. WITH INVESTORS CONTINUING TO HOLD STOCK OF Aquisition. R. SMITH  
AGREES WITH THIS ANALYSIS.

[redacted]  
Via facsimile  
[redacted]

Bruckstein  
& Hofer