

Filing fee
801.11
801.1(b)

January 17, 2002

Patrick Sharp
Federal Trade Commission
Pre-Merger Office
Washington, DC

Dear Patrick:

A. This will confirm the question I raised with you earlier today, relating to whether, as I believe, a single set of filings (and one fee) can be made or whether there must be two sets of filings.

Fund A plans to acquire control of Target Corporation X, indirectly through another corporation. At the present time it will do this in one of two alternative ways, and the decision will depend upon negotiations with other parties.

The single filing by Fund A (and single filing by Target Corporation X) would set out both mechanical alternatives, each of which is an acquisition of voting securities. As a matter of background, I note that Target Corporation X is currently a debtor in a bankruptcy case and the transaction involving Fund A would be pursuant to a plan of reorganization for Target Corporation X.

First Alternative. Under the first alternative Fund A would set up a wholly-owned subsidiary investing more than \$50 million in its voting securities, other investors would also invest in the subsidiary, each in amounts less than \$50 million and Fund A would remain the ultimate parent of the subsidiary. Then the subsidiary would acquire all of the voting securities of the Target Corporation X for approximately \$80 million in cash. Fund A would then be the ultimate parent of the Target Corporation X.

NOTE: There would be no filings in connection with the acquisition of voting securities of the Subsidiary. This is because the intra-corporate exemption of 802.30 would apply to Fund A's investment in the subsidiary. None of the other investors would have to file because they would each acquire less than \$50 million of voting securities of the subsidiary.

[REDACTED]

[REDACTED]

[REDACTED]

Second Alternative. Fund A is already an investor in Corporation B, a corporation with approximately ten stockholders, none of whom own over 33% of Corporation B's voting stock. Under the second alternative transaction structure, Fund A would acquire control of existing Corporation B by investing additional funds and converting presently owned non-voting securities of Corporation B into voting securities of Corporation B. Other investors in Corporation B would do the same. Then Corporation B (controlled by that time by Fund A) would acquire all of the voting securities of the Target Corporation X through a merger. Fund A would end up as the ultimate parent of Corporation B and the target corporation.

There may be a separate batch of filings required in connection with the new investments and conversions of existing investments in Corporation B by Fund A and other present holders of securities in Corporation B. This depends on the market value of the converted securities, as that affects the value of the resulting aggregate holdings of Fund A (and others) in the voting securities of Corporation B. However, these filings are a "side show" and do not affect the filing by Fund A to acquire, indirectly, the voting securities of the Target Corporation X.


Under this single filing described above, where Fund A acquires the Target Corporation X through one of the two alternative ways described above in a transaction valued at more than \$50 million and less than \$100 million, Fund A would make one filing describing both alternatives and paying a single filing fee of \$45,000. The Target Corporation X would make one filing describing the two methods by which it would be acquired. Since the Target Corporation X and its stockholders receive only cash, no filing fee is payable by the Target Corporation X or any of its stockholders.

I would appreciate a call from you to confirm the foregoing analysis.

B. Variation in the Second Alternative. This version I did not describe to you over the phone as I believe it is less likely, but I would appreciate your views.

In the event, under Alternative 2, that Fund A does *not* become the ultimate parent of Corporation B, then there will have to be -- in lieu of the *single* filing by Fund A (and one filing fee) and single response filing by Target Corporation X -- two sets of filings and two acquisition filing fees paid as follows: Filing by Fund A with its payment of \$45,000 filing fee and a responsive filing by the Target Corporation X (to implement the First Alternative) and at the same time a filing by Corporation B and its payment of the \$45,000 filing fee and a responsive filing by Target Corporation X (to implement the "Additional Variation on the Second Alternative).

Target Corporation X will not know which of the two persons (Fund A or Corporation B) will turn out to be the ultimate person of the acquiring person, but Target Corporation X can make its two filings simultaneously in order to speed up the schedule, with one filing fee paid by Fund A and a second filing fee paid by Corporation B.



Patrick Sharp

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As before, the question of filings by Fund A and others with respect to the acquisition of voting securities of Corporation B is a separate matter.

I would appreciate a call from you to confirm as well the correctness of the analysis of the "Variation on the Second Alternative".

Thank you for considering this matter.

Sincerely,

[Redacted signature]

[Redacted text]

called [Redacted] 1/18/2002
I concur with this letter.
(PS)