

[REDACTED]
802.2(h)

[REDACTED]
August 8, 2002

[REDACTED]
Nancy Ovuka
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th and Pennsylvania Avenue, NW
Room 303
Washington, DC 20580

Re: Exemption from filing under Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, pursuant to 16 C.F.R. 802.2(h) (Acquisition of Warehouses)

Dear Nancy:

This letter is to follow up on a conversation that you, [REDACTED] and I had recently regarding the availability of an exemption from the filing and waiting period requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"). The transaction is an acquisition of all the voting securities of a company ("Target") which engages in warehousing activities, as well as in other activities. I represent the acquiring person ("Acquirer") and [REDACTED] represents the Target and its shareholder.

Target has supplied the Acquirer with information regarding Target's revenues for the 11 months ended June 2002, which are the most recent revenue numbers readily available. Target has allocated those revenues among its various operations. Those operations consist of activities which involve warehousing, and activities, such as assembly and transportation, which do not involve warehousing. The activities which involve warehousing are conducted at various facilities owned or leased by Target. Those facilities range from sites at which Target essentially makes available to the public warehousing space on a leased basis and conducts no other activities, to sites at which Target supplies a single customer with warehousing services together with a variety of other related non-warehousing services such as assembly, transportation, etc. The information supplied by Target provides, for each site, an allocation of the revenues derived from that site between revenues attributable to warehousing activities at the site, and revenues attributable to non-warehousing activities at the site.

Based upon the information supplied by Target, the Acquirer has allocated the acquisition price (which it has determined to be equal to the fair market value of the voting securities to be acquired) between the warehousing and non-warehousing activities of Target. In making that allocation, the Acquirer considered as "warehousing revenues" only those revenues which (i) were identified by Target as relating to warehousing activities, and (ii)

[REDACTED]

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were derived from facilities at which at least 80% of the total revenues generated by such facility were attributable to warehousing activities. On this basis, the Acquirer has determined that although the total acquisition price for the stock of Target exceeds \$50 million, the fair market value of the assets of Target which are non-warehousing related is significantly less than \$50 million.

Under 16 C.F.R. 802.2(h), an "acquisition of... warehouses and assets incidental to the ownership of ... warehouses shall be exempt from the requirements of the act... In an acquisition that includes... warehouses, the transfer of any assets that are [not] warehouses shall be subject to the requirements of the act and these rules as if such assets were being transferred in a separate acquisition."¹ You advised preliminarily, that if the acquiring person were to make a good faith determination that the assets of Target which did not constitute warehouses and assets incidental to the ownership of warehouses had a fair market value of less than \$50 million, then the acquisition would not be subject to the filing and waiting period requirements of the Act pursuant to the exemption provided by Rules 802.2(h) and 802.4. As Acquirer has now made that determination, I ask that you confirm that advice, and look forward to speaking with you in the near future with regard to this matter. Thank you for your assistance.

Very truly yours,
[REDACTED]
[REDACTED]
for [REDACTED]
cc: [REDACTED]

8/9/02
Confirmed advice

¹ The fact that this transaction is an acquisition of voting securities as opposed to an acquisition of assets does not impact the availability of the exemption in Rule 802.2(h). Rule 802.4 provides that an acquisition of voting securities of an issuer whose assets consist of assets the purchase of which would be exempt will similarly be exempt from the filing and waiting period requirements of the Act.

[REDACTED]