

[REDACTED]

[REDACTED]

801.11(e)

July 14, 2003

VIA FAX

B. Michael Verne, Esquire
Premerger Notification Office
Federal Trade Commission
Washington, D.C. 20580

Re: Hart-Scott-Rodino

Dear Mr. Verne:

This will confirm your telephone advice today that the following transaction is not reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and implementing regulations.

The transaction is a leveraged buy-out of Target with the following structure. Entity A, Entity B and several members of management of Target form Newco, a subchapter C corporation. Each of Newco's shareholders will hold less than 50% of Newco's voting securities, and will pay less than \$50 million for the Newco voting securities it will hold. Newco's capital will consist of approximately \$47 million in contributions from Newco's shareholders and \$102 million in loans obtained from third parties. The formation of Newco will therefore not be reportable because no shareholder's acquisition of Newco voting securities will satisfy the \$50 million size-of-transaction test.

Prior to the preparation of Newco's first regularly prepared balance sheet, Newco will acquire all of the voting securities of Target. Newco will pay Target's shareholders approximately \$72 to 77 million in cash directly for their shares. The stock purchase agreement will also require Newco to repay to third parties approximately \$65 to 70 million in loans that are currently on Target's books. The remainder of the cash will be used to pay expenses associated with the transaction. You have advised that under 16 C.F.R § 801.11(e) all of the approximately \$149 million cash that will go to pay for the Target's voting securities, to repay its indebtedness and to pay expenses incident to the transaction will be disregarded in determining the size of the acquiring person (Newco). Accordingly, Newco will not satisfy the \$10 million size-of-person test, and the acquisition of Target's voting securities will also not be reportable.

[REDACTED]

[REDACTED]

Law Offices of [REDACTED]

[REDACTED]

B. Michael Verne, Esquire

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Please contact me if the foregoing does not accurately reflect the staff's conclusion of non-reportability.

Thank you.

Sincerely,



BASED ON THE LANGUAGE IN THE SBP
[52 FR 67070, 3/6/87] EXPLAINING THE
UNDERLYING RATIONALE FOR EXPANDING THE
EXCLUSION TO INCLUDE INCIDENTAL EXPENSES
WHICH ARE NOT CONSIDERATION, WE HAVE
TAKEN THE POSITION THAT 301.11(c) WAS
INTENDED TO EXCLUDE ALL CASH WHICH WILL
BE EXHAUSTED AS A RESULT OF THE INSTANT
ACQUISITION.

B. Michael Verne

7/15/03

