

802.9
802.64
802.52

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, June 03, 2004 6:41 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR Confirmation

Mike,

Set forth below is the "corporate" structure we discussed this afternoon on the telephone. I am writing this letter to confirm the applicability of various exemptions from the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act") and the rules and regulations thereto (the "Rules").

The [REDACTED] is managed by the [REDACTED] Investment Board [REDACTED]. [REDACTED] was incorporated as a Federal crown corporation by an Act of Parliament. Pursuant to the Act of Parliament, [REDACTED] issued 10 shares of [REDACTED] to the Minister of Finance (the "Minister") and the Minister, in consultation with the participating provinces, is empowered to appoint all of the directors of [REDACTED]. Based on the foregoing and our discussions, I have determined the following:

1. [REDACTED] is the Ultimate Parent Entity by virtue of the Act of Parliament. Despite the fact that the Minister has the power to appoint all of the directors of [REDACTED], the Minister is an agent of a foreign government which excludes it from the definition of "entity" under the Rules.
2. The exemption under Section 802.9 of the Rules may be applicable so long as voting securities are being acquired "solely for the purpose of investment" and, as a result of the acquisition, the acquiring person would hold 10 percent or less of the outstanding voting securities of the issuer. We understand that the term "solely for the purpose of investment" is narrowly interpreted and that the acquiring person can have "no intention of participating in the formulation, determination or direction of the basic business decisions of the issuer".
3. The exemption under Section 802.64 of the Rules may be applicable to acquisitions of voting securities meeting the four prong test set forth in Section 802.64(b), except for acquisitions described in Section (c) of 802.64. The first prong is satisfied as the [REDACTED] is considered an institutional investor under Section 802.64(a)(10) of the Rules.
4. The exemption under Section 802.52 would be applicable as [REDACTED] is controlled by the Minister (i.e., the Minister appoints the directors of [REDACTED] an agent of a foreign government. The exemption applies to acquisition of assets located within Canada or voting securities of an issuer organized under the laws of Canada. Furthermore, under this

exemption, there is no nexus relationship between the assets/voting securities being acquired and the aggregate sales in or into the US attributable thereto. For greater clarity, the following transactions would be exempt under 802.52.

a. The [REDACTED] acquires 75% of the voting securities of Corporation X, a corporation formed under the laws of Canada, for US\$300 million. Corporation X has 5 US subsidiaries with assets (located in the US) valued at US\$200 million. The US subsidiaries generate sales in the US of US\$500 million.

Please confirm your agreement with each of the points raised above. If you have any questions please don't hesitate to contact me.

Regards.

[REDACTED]

AGREE THIS IS EXEMPT
UNDER 802.52.

B. [Signature]
6/4/04