

802.51  
801.90

February 23, 2005

BY COURIER

Michael Verne, Esq.  
Premerger Notification Office  
Federal Trade Commission  
Room H-314  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Re: Amendment to Executed Agreement

Dear Mike:

This letter confirms our telephone conversation on February 16, 2005 regarding an amendment to an agreement that our client, COMPANY B, will enter into with Company A (together "the Parties").

As we discussed, within the last month COMPANY A and COMPANY B entered into an agreement, whereby COMPANY A will acquire 100% of the shares of COMPANY B, a foreign issuer. Prior to signing the agreement, the Parties concluded that the transaction was exempt from HSR reporting under 16 C.F.R. §802.51 based on the calculations and good faith belief of COMPANY B at the time that its sales in or into the U.S. did not exceed \$50 million in the most recent year. COMPANY B calculated its sales in or into the US based on the audited financial statements from its most recent fiscal year. Based on that calculation, COMPANY B made a representation in the agreement stating that its sales in and into the U.S. were below the current 802.51 threshold of \$50 million.

Shortly after the parties entered into the agreement, but prior to closing, COMPANY B completed the process of double-checking its sales data by running an invoice-by-invoice analysis of shipments in or into the U.S. In doing so, COMPANY B found that several million dollars of sales attributable to a foreign plant were booked as foreign sales in their audited financials, when they were actually shipments to a U.S. customer. COMPANY B has thoroughly re-examined its sales data and concluded that it exceeds the current 802.51 threshold of \$50 million, but that they do not exceed the inflation adjusted threshold of \$53.1 million that will become effective on March 2, 2005.

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Now that COMPANY B has concluded the sales analysis, the Parties intend to amend the representation to reflect that COMPANY B's sales do not exceed \$53.1 million and amend the closing date to occur on or after March 2, 2005. You confirmed that this fact pattern does not raise any issues of avoidance under 801.90 and that the transaction as described will be exempt under the 802.51 inflation adjusted threshold.

Sincerely yours,



AGREE -  
B. Verne  
2/24/05