801.1; 802.31

Ovuka, Nancy M.

From: [redacted]
Sent: Wednesday, March 29, 2006 1:44 PM
To: Ovuka, Nancy M.
Cc: [redacted]
Subject: Confirmation of HSR Advice

[redacted]

March 29, 2006

Ms. Nancy Ovuka
Compliance Specialist
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. §18a (the "Act")

Dear Nancy:

Thank you for taking the time to speak with me on Friday, March 17, 2006. I am writing to confirm the advice you provided. The factual background that I provided you is set forth below:

Background:

Company A is a $113.4 million person and intends to acquire by way of a reverse triangular merger (the "Merger") all of the outstanding voting securities of Company B, which is not engaged in manufacturing. Company B is an $11.3 million person. Company B currently has outstanding shares of common stock and preferred stock, each class of which constitutes voting securities under the Act. Based on the per share value that Company A is to pay for Company B's currently outstanding voting securities, the aggregate value of the currently outstanding voting securities to be acquired by Company A is less than $56.7 million.

In addition to its outstanding voting securities, Company B has outstanding options, warrants and convertible notes, none of which currently carry with them the right to vote for the election of directors of any entity and would thus constitute convertible voting securities under the Act. The holders of the convertible voting securities will receive in connection with the Merger the inherent value of such securities, however, such convertible voting securities will not be exercised/converted in connection with the Merger and such holders will not hold voting securities at the time of the Merger, rather, such holders will simply receive the inherent value of their convertible voting securities and such securities will be canceled in connection with the Merger. The consideration to be paid by Company A in respect of Company B's convertible voting securities is such that if aggregated with the consideration to be paid for Company B's outstanding voting securities would exceed $56.7 million.

Issue:

You were kind enough to answer the following question concerning the above statement of facts.

I have summarized the question and your answer below:

Question: Should the value that is ascribed to the convertible voting securities (i.e. the options, warrants and convertible notes), which value will be paid by Company A in connection with the Merger, be included in the aggregate total amount of the voting securities that Company A will acquire in connection with the Merger?

You confirmed that under the Act only the value of the outstanding voting securities that are to be acquired is considered in determining whether the acquiring person will acquire $56.7 million of voting securities of the acquired person. The consideration to be paid to the holders of convertible voting securities in respect of the inherent value of such securities need not be included in the value of the acquired voting securities.

I hope that this note accurately summarizes the advice that we discussed. If I am incorrect in my summary of our conversation, please let me know at your earliest convenience.

Thank you for your time and assistance.

Regards,

3/30/06

Agree

Y. Drake

[redacted]