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801.1(e)
802.51

January 11, 2002

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

2002 FEB 13 A 11:15

BY FACSIMILE AND U.S. MAIL

Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
6th Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: **"Principal Office" Location for HSR Definition of "Foreign Issuer"**

Dear Mr. Verne:

I am writing to confirm the matters we discussed in our telephone conversation and voice mail and e-mail exchanges on Monday, January 7, 2002 regarding the availability of the exemption from reportability for certain acquisitions by foreign persons of voting securities of a foreign issuer codified in Section 802.51(b) of the regulations promulgated under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a ("HSR").

I described to you a proposed transaction in which a foreign person is acquiring voting securities of a company that is incorporated and organized under the laws of Canada (the "Company"). I told you that the transaction appears to meet all requirements for the Section 802.51(b) exemption as long as the Company is considered to be a "foreign issuer," as defined in 16 C.F.R. § 801.1(e)(2)(ii). In that regard, I relayed that the Company is neither incorporated in the United States nor organized under the laws of the United States. Therefore, the only remaining question in order to determine the availability of the exemption is whether the Company's "principal offices" are in Canada or the United States. *Id.*

To help make that determination, I electronically mailed to you the attached, one-page description of the Company's office locations for your consideration. After reviewing the attached, you called me back and left a voice mail message indicating that based on the facts in the attached, the Premerger Notification Office ("PNO") would consider the Company's

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“principal offices” for purposes of 16 C.F.R. § 801.1(e)(2)(ii) (the definition of “foreign issuer”) to be in Canada rather than the United States. Therefore, based on the facts in the attached and my representations that the Company is not incorporated or organized under the laws of the United States, the PNO would consider the Company to be a foreign issuer as defined in Section 801.1(e)(2)(ii), and the transaction would qualify for the Section 802.51(b) exemption from HSR reportability assuming all of the other requirements for that exemption are met.

Given this understanding, the parties plan to consummate the above-described transaction in the near future without filing an HSR premerger notification form. Therefore, I would appreciate it if you would contact me as soon as possible, but not later than Friday, January 25, 2002, if my understanding is not correct or if I have misstated this summary of our communications in any material way.

Thank you very much for your helpful guidance and assistance on this matter.

Sincerely



Attachment

AGREE - SEE E-MAIL FROM AUTHOR
DATED 1/07/02.

B. Michael
2/13/02

(DELAYED RECEIPT BY MAIL)

The issuer whose voting securities are being acquired is a Canadian company (the "Company") that is incorporated and organized under the laws of Canada with the registered and headquarters office located in Alberta, Canada (consisting of approximately 65 employees in Alberta). The corporate records are maintained in the Alberta offices, including, among other things, the certificate and articles of incorporation, corporate bylaws, all amendments thereto, minutes of Board and shareholder meetings as well as minutes of Board committee meetings.

The Company has four executive officers who are all Canadian citizens. Two of them live in Alberta and work out of the Alberta headquarters office (the Vice President for Operations and the Vice President and Secretary). While the other two officers (the CEO and the CFO) also are Canadian citizens, they live in the United States and work out of a Colorado office which is owned and maintained by an indirect, wholly-owned subsidiary of the Company.

The principal function of the subsidiary office in Colorado is to provide certain financial accounting services for the Company, primarily because the CFO is officed in Colorado. Only 12 people work in the Colorado office (compared with 65 in Alberta), and the subsidiary's only asset consists of its leased office premises in Colorado. Aside from the CFO (and the CEO), eight of the twelve people in the Colorado office are financial staffers who report to the CFO, one is the office manager, and one is a "technical person," with all remaining corporate headquarters-type staffers officed in Alberta. All Company financial statements are and always have been prepared in accordance with Canadian generally accepted accounting principles, and the engagement of independent auditors is and always has been with the Alberta or Toronto offices of such auditors.

Most of the Company's administrative and operational work is handled out of the Alberta office, where most of the "headquarters office" type functions are handled (aside from those financial matters handled in the Colorado office). Nevertheless, the CEO is officed in Colorado, although he spends a good deal of time in the Alberta office, working out of California, or in transit between offices.

The Company's annual report to shareholders lists the Alberta office address as the official, registered address of the Company, as does the Company's most recent Form 10-Q securities filing. Although the Company's most recent Form 10-K shows the Colorado office address as an address for the Company, that practice has been discontinued and all subsequent securities filings list only the Alberta address.

Finally, the Company has seven directors, six of whom are Canadian citizens with one a United States citizen. The majority of the directors is and always has been comprised of Canadian citizens ordinarily resident in Canada. With one exception, all Board of Directors meetings over the past five years have been held in Canada. Shareholder meetings have always been held in Canada. Since the current CEO was appointed on April 22, 1997, all material decisions affecting the business have been made in Canada by the Board of Directors.