

802.30

[REDACTED]

[REDACTED]

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December 3, 1990

Mr. Thomas F. Hancock
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

Section 5
which restricts release under the
Freedom of Information Act

Dear Mr. Hancock:

The purpose of this letter is to confirm our telephone conversation of last Monday, November 26, 1990. That conversation, as you may recall, concerned the fact scenario outlined under Item No. 147 of the ABA's Premerger Notification Practice Manual (1985).

In No. 147, a corporation (A) had two shareholders, one of which (B) held outstanding voting securities constituting control of A, with the other shareholder (C) holding the minority stock ownership position. A created a new subsidiary (D) and transferred certain assets to it, and then redeemed a portion of B's shares in consideration for transferring all of D's shares to B. The effect of the transaction was to vest control over A to C without any affirmative action having been taken by C.

Item 147 indicates, according to a 1980 request for interpretation, that the transaction as a whole (and its three component parts) is exempt under Rule §802.30, respecting intra-person transactions. The creation of, and presumably the transfer of assets to, subsidiary D was exempt because ultimate beneficial ownership did not change. The redemption of B's stock apparently was exempt because the issuer was merely acquiring its own shares (citing example 4 of §802.30). Finally, the transfer of the D's stock to B in consideration for the redemption was exempt because B controlled D's parent, A.

In our conversation, you confirmed this remains the position of the staff at the Premerger Notification Office, the criticism in the Commentary to Item No. 147 notwithstanding. However, you cautioned that any transaction purporting to fall under Item No. 147 would be subject to scrutiny under Rule

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\$801.90, which provides that transactions entered into for the purpose of avoiding the Act's premerger notification and waiting requirements will be disregarded. In particular, you noted that if the minority shareholder who, by virtue of the redemption, became the majority shareholder, was somehow the motivating force behind the transaction, then it would be a sham transaction and the exemption would not be available.

Please let me know in writing whether or not the foregoing accurately and completely reflects our telephone conversation regarding this subject. For your convenience, I have enclosed a copy of this letter herewith for your to make any notations you feel appropriate to confirm our conversation. I appreciate your assistance, and please give me a call at [REDACTED] if you have any questions.

Very truly yours,
[REDACTED]

[REDACTED]

[REDACTED]

Sounds OK

Hancock CK

JFH

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