

Q 500.63

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June 21, 1991

Via Federal Express

Mr. Thomas Hancock  
Premerger Notification Division  
Room 303  
Federal Trade Commission  
Sixth Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

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JUN 21 10 21 AM '91  
FEDERAL TRADE COMMISSION  
NOTIFICATION DIVISION

Our File No. [REDACTED]

Dear Mr. Hancock:

I am writing to confirm the informal advice which you provided today concerning application of the regulations governing premerger notification.

I described to you the following situation. A, a corporation, holds approximately 40% of the outstanding voting securities of an issuer (the "Issuer"), which has net assets or total annual sales in excess of \$100 million. A made a substantial loan to X, an individual. X does not control or have an ownership interest in A, and the loan agreement was negotiated at arms' length. A is in the business of investments in [REDACTED] entities and does not regularly loan money. X provided security for the loan by a pledge of approximately 20% of the voting securities of the Issuer.

X is now in default on the loan. A wishes to foreclose on the shares of the Issuer pledged to it and subsequently resell those shares to another entity. My initial question to you was whether A is required to file a premerger notification and report form and await the waiting period prior to foreclosing on the securities, or whether A may avail itself of the exception to

reporting contained in 16 CFR §802.63(a). You told me that it was the position of the FTC staff that A would qualify for the exemption of §802.63(a), and would be exempt from reporting the acquisition of shares of the Issuer upon foreclosure even though A is not in the business of lending money.

I additionally asked you whether A must file a premerger notification and report form and observe the waiting period upon reselling shares of the Issuer acquired in foreclosure. You confirmed that this would be required if the size of the parties and size of the transaction tests were met. You further stated that since A would hold 60% of the shares of the Issuer at the time of the resale, A, not the Issuer, would be required to report as the "acquired" person.

I very much appreciate your assistance. If I have inaccurately stated any part of our discussion in this letter, I would appreciate it if you would notify me so that I can correctly memorialize your advice.

Sincerely yours

[Redacted signature]

[Redacted text]

4/26/91  
6/2/91

OK OK

TEH  
TTT