

*... of ... voting stock pursuant to a default under 10a.63. Further of this case ...*

[REDACTED]

July 26, 1991

By Hand Delivery

Victor Cohen, Esq.  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
Sixth St. and Pennsylvania Ave., N.W.  
Washington, D.C. 20580

JUL 26 4 41 PM '91  
FEDERAL TRADE COMMISSION  
PREMERGER NOTIFICATION

Dear Victor:

I am writing this letter to confirm the oral advice you provided on July 23 that the following transaction is not reportable under the Hart-Scott-Rodino Antitrust Improvements Act:

[REDACTED] will be the acquiring person (within the meaning of § 801.2(a) of the HSR Rules) with respect to 100% of the voting securities of each of eight related corporations, and a majority of the voting securities of a ninth related corporation, all generally referred to as the [REDACTED]. Six of these companies, while having several shareholders in common, are their own ultimate parent entities; a single individual, A, controls more than 50% of the voting securities of each of the remaining three companies.

[REDACTED] formerly known as [REDACTED] is engaged in the business of making loans. In the ordinary course of its business [REDACTED] routinely acquires secured property upon loan defaults. In [REDACTED], eight of the nine [REDACTED] jointly borrowed \$82 million from [REDACTED] pledging or mortgaging substantially all of their assets as security for the loan. The loan was also personally guaranteed by A, the individual who is the ultimate parent entity of the ninth [REDACTED] (which has annual net sales and total assets of less than \$2 million). Approximately \$57 million of the principal amount of the loan has not

[REDACTED]

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been repaid and the loan has been in default since 1988.

There are presently pending in, respectively, federal court, probate court and state district court in [REDACTED] three lawsuits involving the [REDACTED] their shareholders and directors, and [REDACTED]. These suits, brought principally by certain shareholders of the [REDACTED] include allegations of mismanagement, unlawful transfers of assets between certain of the companies, fraud, and a variety of other RICO, securities, and state law claims.

The parties to these suits now propose to enter into a global settlement agreement both to dispose of the loan liability and terminate the litigation. Under the agreement, the parties would execute mutual releases, [REDACTED] would acquire control of the voting securities of all the [REDACTED] would release A from his personal loan guarantee, and [REDACTED] would pay the shareholders an aggregate total of approximately \$6.5 million.

As we discussed over the telephone, some, if not all, of the acquisitions by [REDACTED] of the stock of the various [REDACTED] may be exempt from filing on size of person or size of transaction grounds. You indicated, however, that § 802.63 of the Commission's Rules would exempt all of the [REDACTED] stock acquisitions because the loan is in default, substantially all of the [REDACTED] assets are pledged as security for the loan, and [REDACTED] in the ordinary course of its business, both makes loans and acquires property upon loan defaults.

If the above does not accurately reflect the advice you provided that § 802.63 exempts [REDACTED] proposed acquisitions of the [REDACTED] voting securities, please call me immediately.

As always, I thank you very much for your time and most helpful assistance.

Very truly yours,  
[REDACTED]