

7A(c)(1); 6802.1(b)

[REDACTED]

August 9, 1991

Aug 12 10 51 AM '91  
FEDERAL TRADE COMMISSION

VIA FACSIMILE

Richard B. Smith, Senior Attorney  
Premerger Notification Office  
Room 303  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580

This material may be subject to  
the confidentiality provision of  
Section 7A (h) of the Clayton Act  
which restricts release under the  
Freedom of Information Act

Dear Mr. Smith:

This letter will confirm a teleconference of  
August 7, 1991, involving you, [REDACTED]

[REDACTED]

During that conversation, you expressed the opinion that the transaction we discussed, as described below, would be exempt from the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act (unless reportable as an acquisition of voting securities by the entity identified below as Party Y).

The transaction in question involves the formation of a noncorporate joint venture between Party X and Party Y that would own mining rights (the "realty interests") to certain undeveloped property. These realty interests are currently owned by Party Y. Party X will initially pay \$500,000 for an option to acquire a 50% interest in the the joint venture. This option may be exercised within 60 days for additional consideration. If the option is exercised, Party Y will receive from Party X a total of \$5 million in cash (including the \$500,000 option payment) and a number of shares of Party X's Common Stock that, at the option date,

had a market value of \$10 million.\*/ In addition, the agreement that would govern the joint venture would require Party X to spend at least \$5,000,000 over the next 3 years to explore and, if appropriate, develop the property.

For purposes of this letter only, we assume that this transaction might be characterized as an acquisition by Party X of a 50% interest in the realty interests of the joint venture. Based on our conversation, however, we understand that the transaction falls within the Premerger Notification Office staff's definition of an ordinary course of business transaction, because the deal involves the transfer of realty rights which are not currently revenue-producing. See ABA Premerger Notification Practice Manual, Interpretations Relating to Section 7A, Paragraph 2, pp. 1-2. Since Section 7A(c)(1) of the Clayton Act exempts ordinary course of business transactions from the notification requirements, Party X need not file a Hart-Scott-Rodino Notification Form as an acquiring person.

If this letter does not correctly reflect our conversation or mischaracterizes the view of the Premerger Notification Office, please contact me immediately. Unless we hear from you, we will advise our client, Party X, to rely on your advice that it has no reporting obligation as a putative acquiring person.

We thank you for your time and assistance on this matter.

Sincerely,

[Redacted signature]

[Redacted cc:]  
cc: [Redacted]

8/12/91 - advised [Redacted] that formation of a bona fide partnership under is not reportable under 801.40. Viewing this as a purchase of an interest in non-productive real estate, the transaction is also not reportable under the PMN office's view of 7A(c)(1).  
P.R. Smith

\*/ We understand that [Redacted] is writing a separate confirming letter on the possibility that Party Y's acquisition of these shares might constitute a reportable acquisition of voting securities of Party X.