

[REDACTED]

August 16, 1991
Freedom of Information Act

Marian Bruno, Esq.
Premerger Notification Office
Federal Trade Commission
Washington, D.C. 20580

Dear Ms. Bruno:

PRIN Office

This letter summarizes our telephone conversations of August 7, 1991 concerning when the FTC would take the position that an acquisition has occurred for purposes of the Hart-Scott-Rodino Antitrust Improvements Act (the "Act"). We discussed a proposed transaction in which one of our clients intends to provide funds to another entity (the "Issuer") and receive a debenture immediately convertible into common stock of the Issuer. Simultaneously, the Issuer would use those funds to purchase all of its outstanding shares of stock, with the exception of one share. In addition, the remaining shareholder would enter into an agreement that required him to sell his one share to the Issuer immediately upon the conversion by our client of the debenture into common stock (the "Put"). The shareholder would also agree to give to our client an irrevocable proxy to vote that share of stock.

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You informed me that the FTC staff takes the position that the combination of a convertible debenture, Put, and irrevocable proxy would not constitute an acquisition under the Act, although delivery of a presently-exercisable option to acquire the share, coupled with an irrevocable proxy to vote that share would constitute an acquisition of voting securities at the time the option and proxy are acquired. After further discussion with our client, the parties have decided to restructure the transaction to replace the Put with a presently-exercisable option.

Under the FTC staff position, therefore, our client will acquire control of the Issuer at the time it acquires the option and proxy. Its subsequent exercise of the option and conversion of the debenture will be exempt, under Section 7A(c)(3) of the Act and Rule § 802.30, as an intraperson transaction. Additionally, because the

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acquisition price is less than \$15,000,000 and the annual net sales and assets of the issuer are under \$25,000,000, the acquisition is exempt under Rule § 802.20.

As I explained to you, the transaction was structured as described above because of certain positions taken by our client with respect to certain pending state law matters and is entirely unrelated to any attempt to avoid the requirements of the Act.

With the restructured form of the transaction in place, our client does not intend to make any filings under the Act in reliance upon the telephone conversations that [REDACTED] and I have had with you. In the event that I have incorrectly summarized the substance of our conversations, I would very much appreciate your call to me in that regard.

We thank you very much for your assistance and explanation of the FTC staff position.

Sincerely,

[REDACTED]

ATC

cc: [REDACTED]