TEL [redacted] Oct 22 91 13:10 No.017 P.02

802.63

October 22, 1991

VIA FACSIMILE

Mr. John Sipple
Assistant Director
Premerger Office of the Bureau of Competition,
Federal Trade Commission
Washington, D.C.

Re: Applicability of Rule 802.63

Dear Mr. Sipple:

Following up on our conversation of last evening, we shall, as you requested, attempt to set forth the facts of the present situation and our thoughts relating thereto so that we might be able to more meaningful discuss such facts and the law.

Insurance Company A ("A") originally extended credit to Corporation B ("B") in the form of a senior subordinated debt obligation evidenced by a Note. Said Note had a final maturity of 10 years and an average life of 9 years. A also received Warrants to purchase common stock of B in the original transaction. Said original transaction occurred in 1987. Subsequently, B experienced financial troubles and restructured its debt obligations with certain of its creditors, including A. As a result of such work-out A received replacement Notes and common stock for its existing Notes. Presently, B is experiencing financial difficulties and is in default under the now outstanding Notes. B is currently negotiating with its creditors, including A, in a debt restructuring/reorganization. As a result of the proposed reorganization, A would receive shares of common stock in exchange for all of its debt, such that, after giving effect to such exchange, A would hold 55% of the outstanding common stock of B.

A is a insurance company and is engaged in the ordinary course of its business in the present work-out/restructuring. A clearly entered into the original loan transaction with the intent of extending credit to B and without any intent of evading the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

We feel that A is clearly a creditor of B and, as such, is entitled to an exemption from such reporting requirements pursuant to the provisions of Rule 802.63(a).

Based on our discussions with you yesterday and with Thomas Hancock of your offices on Friday, October 18, it is our understanding that the exemption afforded by Rule 802.63(a) does not contain any requirement that the acquiring entity not gain "control" of the acquired entity or that the acquiring entity in such work-out make the subject acquisition "solely for the purpose of investment."

Near the conclusion of our conversation, you had raised some concern as to whether the insurance company was a "creditor". I believe that the S.B.P. relating to Section 802.63 clearly contemplates that insurance companies are often creditors of business entities. The S.B.P. states that "[t]hese transactions occur with great frequency in the insurance, banking, and finance industries. To interpose the act's notification and waiting period requirements before such acquisitions would severely impede the normal and essential procedures of these industries without achieving any significant gain in antitrust enforcement." Said S.B.P. goes on to explain that the Commission specifically solicited comments on the proper interpretation of Section 7A(c)(11), specifically requesting information concerning "with what frequency, and under what circumstances, do banks, banking associations, trust companies, investment companies, and insurance companies acquire voting securities pursuant to a plan of reorganization or dissolution or assets (as distinguished from securities) in the normal course of business." The S.B.P. goes on to state that "[r]evised §802.63 was drafted in response to a large number of comments from the banking and insurance communities explaining the reasons for exempting various common types of transactions in their industries." Consequently, we believe that an insurance company which extends credit to a corporation in the normal course of its business via a private placement of debt securities is a "creditor" for purposes of Section 802.63(a). We find no evidence to the contrary in the statutes, the rules or in the S.B.P. We respectfully ask for your guidance in connection with this matter.

Please contact the undersigned at [redacted] at your earliest convenience to discuss the foregoing.

Very truly yours,

[redacted]

10/23/91 Per J/S's request, called [redacted] He advised that B was not a competitor of A, the insurance company. I advised that A appeared to be a creditor of B and, as such, in a bona fide debt workout, could take voting stock of B which would result in A's holding 55% of B's voting stock. (A's earlier acquisition of B's voting stock was less than 50% and less than

[illegible]