

Under 17(c)(1) the acquisition of voting stock of a corporation (other than one holding exempt realty) is not exempt even though the acquisition of assets by themselves would be exempt.

HA(11)
802.20
802.64

October 29, 1991

Under 802.20 we look at total assets, including cash, + not net asset amount + the subject transaction is not exempt under 802.64 to acquire 10% of the voting stock. *series BY Clinton*

Section 7A... which restricts... Freedom of Information Act

Premier Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

By Messenger

Attention: Mr. Victor Cohen

Gentlemen:

On behalf of our client, [redacted] we seek the informal advice of the staff of the Federal Trade Commission as to the applicability of the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), including the filing of a Notification and Report Form thereunder to the proposed transaction described below.

[redacted] currently intends to purchase from [redacted] all the outstanding stock of [redacted]. The anticipated purchase price is \$1,000.

[redacted] is a single purpose corporation formed in 1989 at the request of [redacted] in order to facilitate a production payment financing transaction by [redacted]. A production payment is similar to a royalty interest except that it expires upon payment of a specified amount rather than continuing for the productive life of the underlying property. The use of single purpose corporations such as [redacted] is customary in the oil and gas industry in connection with production payment financing because of limitations under applicable banking regulations on the ability of banks to own real estate. Thus, in the typical financing transaction, an oil and gas company creates the production payment, conveys it to a single purpose corporation, which simultaneously borrows the funds required to purchase the production payment from a bank. [redacted] functions in this capacity in connection with [redacted] production payment financing.

[redacted]

[REDACTED] assets consist solely of (i) an oil and gas production payment (the "Production Payment") and (ii) \$1,000 in cash. The outstanding Production Payment balance currently is approximately \$48,000,000; thus [REDACTED] will receive aggregate cash payments in this amount, plus related interest amounts, over the life of the Production Payment. [REDACTED] loan balance is identical to the Production Payment balance. Payments received by [REDACTED] in respect of the Production Payment are immediately applied to reduce the bank debt. Therefor, on the balance sheet of [REDACTED] the Production Payment is offset by a corresponding liability which at all times is equal to the value of the Production Payment; thus the total net assets of [REDACTED] equal approximately \$1,000.

The underlying oil and gas leases that are burdened by the Production Payment are operated by [REDACTED] and/or its industry partners. [REDACTED] as the holder of the Production Payment, has no operational power or control or other operations. [REDACTED] also has no employees.

As is typical in production payment financings, [REDACTED] has, and [REDACTED] will be, reimbursed by [REDACTED] for actual expenses incurred in connection with owning [REDACTED] as well as payment of certain fees, which in the case of [REDACTED] will be approximately [REDACTED] initially, and [REDACTED] annually thereafter until the Production Payment terminates. In effect, the [REDACTED] in return for holding the stock of [REDACTED]

The parties have determined to effect the transfer as a stock transaction because an asset transfer would require that (i) a new single purpose subsidiary be formed by [REDACTED] (ii) new loan documents be prepared and (iii) a reconveyance of the Production Payment occur, all of which would require significant expenditures.

For purposes of the Act's size of person test under Section 7(A)(a)(2) of the Act, [REDACTED] would be considered a "person which has total assets of \$100,000,000 or more" and [REDACTED] although its net value is only \$1,000, would be considered a "person not engaged in manufacturing which has total assets of \$10,000,000 or more".

Although the size of the transaction test under Section 7A(a)(3) is nominally met because more than 15% of the stock of [REDACTED] is being acquired, it is our view that under the particular circumstances of this transaction, the minimum dollar value requirement under Rule 802.20 for application of the filing requirement should not be deemed to be met.

[REDACTED]

Under previous informal interpretations of the staff, it is our understanding that the Production Payment would be considered a contract right for the payment of cash and would not constitute an asset for purposes of determining the size of the transaction; thus, under this interpretation, although [REDACTED] is acquiring more than 15% of the voting stock of [REDACTED] assets do not exceed the minimum dollar value requirements set forth under Rule 802.20.

Both [REDACTED] and [REDACTED] are tax-exempt organizations under Section 501(c)(3) of the Internal Revenue Code, and neither [REDACTED] nor [REDACTED] is engaged in the oil and gas business or the business of acquiring or disposing of interests similar to the Production Payment. Obviously, the proposed transfer of the Production Payment resulting from the sale of [REDACTED] stock will have no anti-competitive effect.

Accordingly, we seek the informal advice of the staff that the specific transaction described above would not be subject to the filing requirements of the Act because the Production Payment represents a contract right for the payment of cash and in the context of the proposed transaction would not constitute an asset for purposes of the size of the transaction test.

We appreciate your attention to this letter at your earliest convenience. Please address any questions or comments you may have on this matter to the undersigned at [REDACTED]

Very truly yours,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Premerger Notification Office

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October 29, 1991

[REDACTED]

cc:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]