

6801.11 (e); 801.40

November 14, 1991

Via Facsimile

Richard B. Smith, Esq.
Federal Trade Commission
6th & Pennsylvania Avenue, N.W.
Room 303
Washington, D.C. 20580

Re: Application of Section 801.11(e)

Dear Mr. Smith:

Thank you for your comments provided to my colleague, [REDACTED] and me during our telephone conversation of November 6, 1991, regarding Section 801.11(e) of the regulations adopted pursuant to the Hart-Scott-Rodino ("HSR") Antitrust Improvements Act of 1976. As agreed, we have set forth below our understanding of your responses to our questions regarding a particular transaction anticipated by our client (the "Transaction").

The relevant facts of the Transaction are summarized as follows. A newly formed corporation [REDACTED] is to acquire stock and assets that are currently owned, directly or indirectly, by a U.S. corporation ("Company A"). The Transaction will be structured as the simultaneous acquisition by [REDACTED] of both (i) the stock of four separate entities controlled directly or indirectly by Company A, and (ii) certain assets owned by Company A or by other entities controlled directly or indirectly by Company A.

At the time of the Transaction, [REDACTED] will not have a regularly prepared balance sheet, and it will not be controlled by any other entity. Each of the four shareholders of [REDACTED] (the "Shareholders") are expected to contribute approximately \$10,000 apiece for 25% of the shares of [REDACTED]. Other than making these contributions for [REDACTED] shares, the Shareholders will not contribute, or enter into agreements to contribute, any assets, such as, for example, loan guarantees or credit of

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any kind, to [REDACTED]. None of the Shareholders will be authorized contractually or otherwise to designate more than 25% of [REDACTED] Board of Directors.

In order to make the acquisition, [REDACTED] will borrow funds from a third party. The borrowed funds will be used to acquire the stock and assets subject to the Transaction. The only assets held by [REDACTED] following the Transaction other than those acquired in the Transaction, will be the initial contributions of \$10,000 apiece made by the Shareholders plus any portion of the borrowed funds not used in the Transaction. The total of these two amounts will be less than \$10 million.

In our telephone conversation, we asked you whether the Transaction will be subject to the HSR premerger notification and waiting period requirements. Specifically, we asked whether the simultaneous acquisition of the stock of the four entities and the assets of several other entities, all such entities being included in the same "person" for purposes of HSR, would constitute one acquisition, and, therefore, whether the nature of this Transaction will cause it not to be subject to reporting by virtue of Section 801.11(e) of the HSR regulations.

We understand your answer to be that the Transaction would not be reportable because under Section 801.11(e) [REDACTED] would not meet the size-of-person test. Please let us know if our understanding in this regard is incorrect.

Thank you for your assistance in this matter.

Sincerely yours,
[REDACTED]

cc: [REDACTED]

11/14/91 - called [REDACTED] and advised that letter correctly reflects our earlier discussion and that 801.11(e) would reduce [REDACTED] size below 10M for the purchase of the various voting stock and assets of entities controlled by Company A in this one transaction. Also, formation of [REDACTED] is non-reportable since none of these funds taking back w/s in excess of \$5M. RB Smith