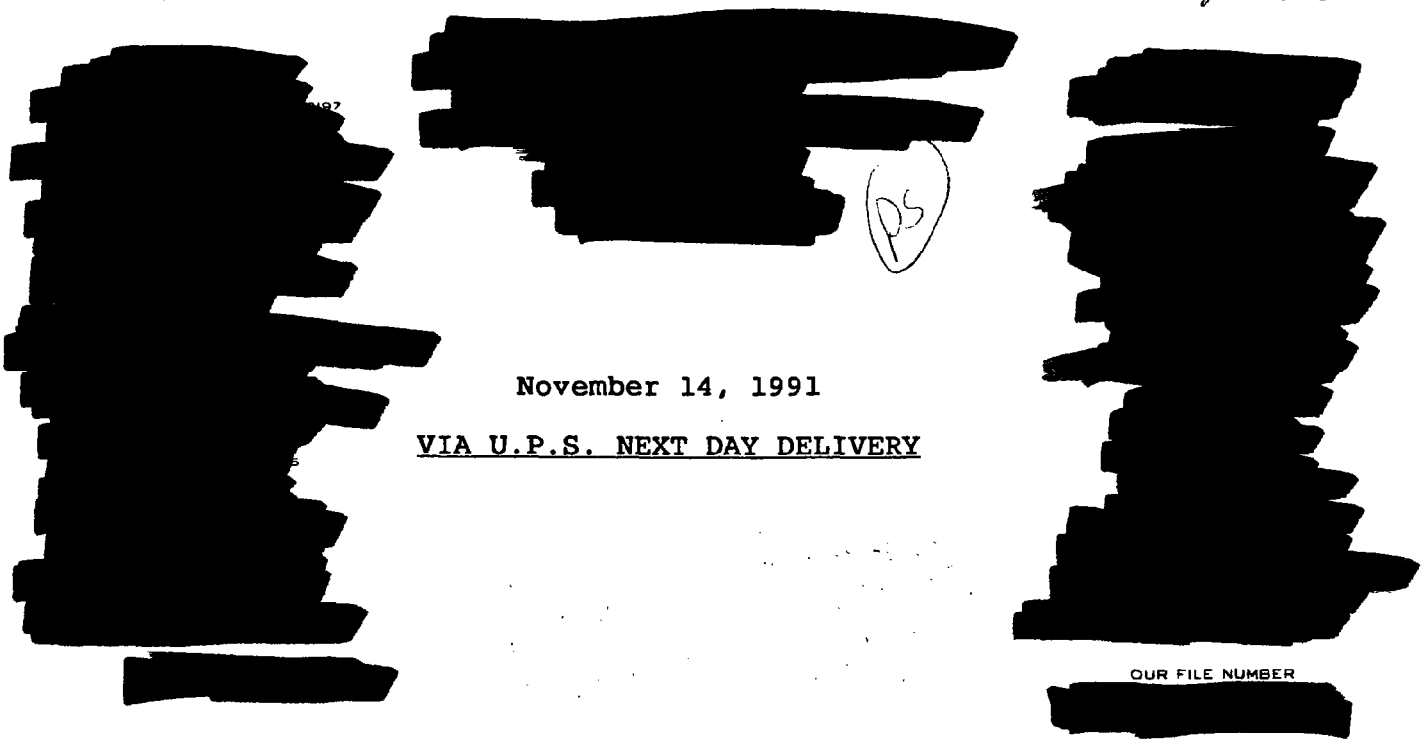


802,30
802,10



November 14, 1991

VIA U.P.S. NEXT DAY DELIVERY

OUR FILE NUMBER

Premerger Notification Office
Bureau of Competition
Room 303
Sixth Street & Pennsylvania Avenue, N.W.
Federal Trade Commission
Washington, D.C. 20580

Attention: Mr. Patrick Sharpe

Re: Premerger Notification and Report

Dear Mr. Sharpe:

This letter is to confirm my telephone conversation with you on November 8, 1991 in which we discussed the exemptions from coverage provided by the rules (the "Rules") promulgated under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), in various contexts, including (i) a merger of a limited partnership into its wholly owned corporate subsidiary, where both the parent and the subsidiary meet the applicable size-of-person tests, and (ii) an acquisition of common stock by a unitholder pursuant to the merger of a limited partnership into its wholly owned corporate subsidiary.

Parent-Subsidiary Merger

In the course of our telephone conversation, you indicated that the merger of a limited partnership into a subsidiary corporation is exempt under Section 802.30 of the

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Rules because the acquiring and acquired person are the same person, notwithstanding that the subsidiary, rather than the parent, is the survivor in such merger. Our client, [REDACTED], plans to convert to corporate form, subject to its unitholders' approval, by merging (the "Merger") with and into its wholly owned subsidiary, [REDACTED], a recently formed [REDACTED]. Immediately prior to the Merger, the [REDACTED] assets will exceed \$100 million and [REDACTED] assets will exceed \$10 million. [REDACTED] will survive the Merger and, pursuant to the Merger, will succeed to all of the [REDACTED] assets and liabilities. Upon consummation of the Merger, management of [REDACTED] will be the same as that of the [REDACTED] will be managed by the persons who are currently the members of the Board of Directors and officers of the managing general partner of the [REDACTED]. Also pursuant to the Merger, the unitholders of the [REDACTED] will receive, in exchange for each unit of the [REDACTED] (representing beneficial ownership of an underlying limited partnership interest), one share of common stock of [REDACTED]. Please confirm that, pursuant to Section 802.30 of the Rules, the Merger is exempt from the Act's premerger notification reporting requirements because the [REDACTED] and [REDACTED] are deemed to be the same person for purposes of the Act and the Rules.

Exchange of Securities Pursuant to Parent-Subsidiary Merger

Pursuant to the Merger, a unitholder of the [REDACTED] (the "Unitholder") holding approximately 10.5% of the Partnership's outstanding units, will acquire, in the one-for-one exchange of units for shares, shares of common stock of [REDACTED] having an aggregate value in excess of \$15 million. The Unitholder meets the applicable size-of-person test under Section 7A(a) of the Act.

You indicated in our telephone conversation that generally the distribution of shares to a security holder pursuant to a merger would be a reportable transaction, assuming the size-of-person tests are met and the transaction exceeds the acquisition thresholds of Section 7A(a) of the Act. However, you also acknowledged that there are instances in which the Rules on their face do not provide clear exemptions for transactions that do not raise the competition and antitrust concerns which the Act and the Rules were designed to address.

Section 7A(d) of the Act indicates that the purpose of the Act is to facilitate the Federal Trade Commission's and Attorney General's analysis of whether a transaction or acquisition, if consummated, would violate the antitrust laws. The Act and the Rules provide enforcement agencies with a tool to obtain information regarding a proposed transaction in sufficient time to challenge a transaction that raises antitrust concerns prior to consummation of the transaction. In some cases, such as those covered by the stock dividend exemption provided by Section 802.10 of the Rules and the intraperson exemption provided by Section 802.30 of the Rules, it is clear that the type of transaction will have no effect on competition, regardless of the specifics of the particular transaction.

We respectfully submit that the acquisition of shares of [redacted] by the Unitholder in the Merger does not, directly or indirectly, affect competition and raises no antitrust concerns and, therefore, should not be a reportable transaction under the Act and the Rules. The Unitholder's acquisition of the shares of [redacted] is merely an ancillary effect of the Merger, which is itself an exempt transaction because it has no effect on competition. The Merger has no effect on competition because the [redacted] and [redacted] are the same "person," not only in the sense that the [redacted] is the ultimate parent entity with respect to both the [redacted] and [redacted] but also in the sense that the assets, liabilities, operations, management and ownership of [redacted] upon consummation of the Merger will be virtually identical to those of the [redacted]. Pursuant to the Merger, [redacted] will acquire all of the assets, assume all of the liabilities and continue the current operations of the [redacted]. In addition, the unitholders will receive shares of [redacted] in a one-for-one exchange. The [redacted] is one of the founders of the business of the [redacted] is the Chairman of the Board and Chief Executive Officer of both the managing general partner of the [redacted] and [redacted] and has continually served as [redacted]. Because no substantial change occurs in the assets, operations, management or ownership of [redacted] or the [redacted] relationship with [redacted] premerger notification filing with and review by the Federal Trade Commission and Department of Justice in this context would unnecessarily burden the Federal Trade Commission and Department of Justice and subject the [redacted] to significant costs and filing fees, without any corresponding benefit.

*Pool argument
where is the
exemption?*

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Moreover, based on my telephone conversation with you, it is our understanding that the Federal Trade Commission has informally taken the position that stockholders acquiring securities pursuant to a reincorporation from one state to another would not be subject to the reporting requirements of the Act and the Rules. We believe that the acquisition of securities in the conversion of the [redacted] from partnership to corporate form is substantially similar to the acquisition of securities in a business reincorporation in which an existing corporation is reorganized under the laws of another state. In both instances, there is no meaningful change to the assets, operations, management or ownership of the business. In addition, in both instances, the transaction has absolutely no impact on competition and raises no antitrust concerns. Thus, in a context similar to the acquisition of securities in the Merger, we understand that the Federal Trade Commission has concluded that the filing of premerger notification would not serve a useful purpose.

*PMN Office
not FTC*

*- PMN Office
not FTC*

Based upon the foregoing, we respectfully request that you confirm that both the Merger and the acquisition of [redacted] common stock pursuant to the merger are exempt from the premerger notification filing requirements of the Act and the Rules. If you require further information regarding the Merger or the distribution of securities in the Merger in order to respond to this request, please call me at the above-indicated number.

*How?
no exemptio
applies*

Finally, we respectfully request that you afford this letter confidential treatment pursuant to Section 7A(h) of the Act. Kindly stamp the enclosed copy of this letter to acknowledge receipt and return it to me in the enclosed, self-addressed, stamped envelope. Thank you for your consideration of this matter.

Very truly yours,

[redacted signature]

[redacted]

*The Unitholder must report. See #69
premerger Practice manual.*

*contacted [redacted] (in)
11-22-91 and*