

801.40

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December 9, 1991

BY FAX

Mr. Hy David Rubenstein, Esq.
Premerger Notification Office
Federal Trade Commission
6th & Pennsylvania Ave., N.W.
Washington, D.C. 20580

This material may be subject to
the confidentiality provision of
the Freedom of Information Act

Re: Informal Hart-Scott-Rodino Opinion Letter

Dear Mr. Rubenstein:

As you suggested, I am writing to obtain the Staff's position on the applicability of Section 801.40(c) to the transaction described below.

FACTS

Company "A" and Company "B" propose to form a joint venture corporation ("NEWCO"), the stock of which will be owned 80% by Company A and 20% by Company B.

At the time of the formation of NEWCO, Company A will transfer less than \$25 million and possibly less than \$15 million to NEWCO, almost all of which will immediately be transferred to Company B. Company B will contribute assets worth less than \$25 million to NEWCO. No person contributing to the formation of the joint venture has agreed to extend or guarantee any credit or other obligations of the joint venture.

At the closing of the transaction, NEWCO will have total assets of less than \$25 million.

ANALYSIS

Company A's acquisition of 80% of NEWCO is valued at less than \$15 million. Thus, under Section 802.20(b), this transaction is reportable only if NEWCO has total assets of \$25 million or more as defined by Section 801.40(c)(1).

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Section 801.40(c)(1) provides that the assets of a joint venture corporation include "all assets which any person contributing to the formation of the joint venture or other corporation has agreed to transfer or for which agreements have been secured for the joint venture or other corporation to obtain at any time, whether or not such person is subject to the requirements of the act"

It is our position that the funds transferred to NEWCO and subsequently to Company B are not included in the assets of the joint venture corporation as defined by paragraph (c). NEWCO will not hold these funds for any length of time. Interpreting Section 801.40(c)(1) to include Company A's funds immediately transferred to Company B results in "double counting" and an inaccurate accounting of the assets held by NEWCO at the close of the transaction.

We would appreciate learning the staff's position on this matter as soon as practicable. We would, of course, be pleased to answer any questions or discuss this matter further.

Sincerely,

[REDACTED SIGNATURE]

[REDACTED]

*Dec. 12;
Called [REDACTED]
Reportable as it stands now.
801.40(c) requires aggregation
of all contributions to J.V.
RS. of our office
agrees.*

[REDACTED]