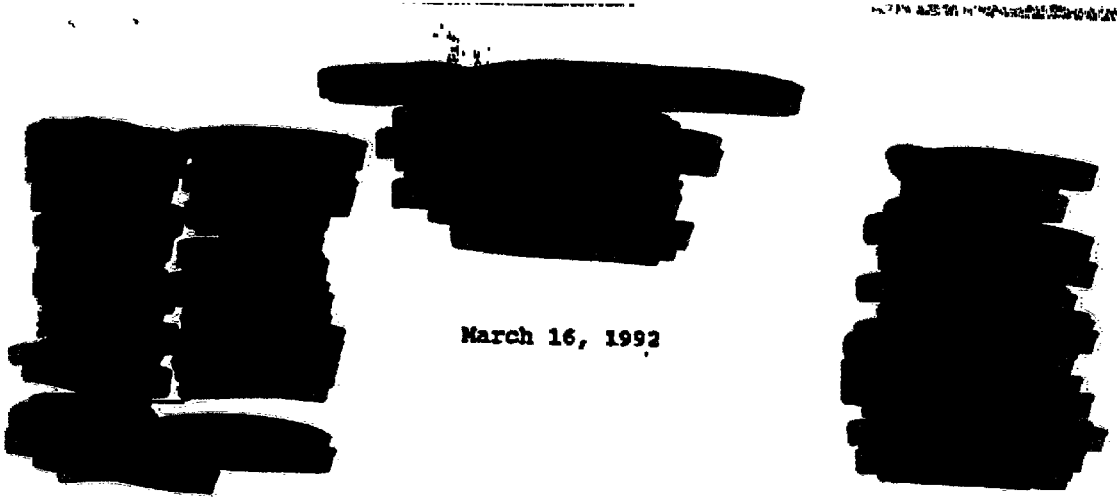

March 16, 1992

Via Facsimile

Thomas Hancock, Esq.
Federal Trade Commission
Premerger Notification Bureau
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Hancock:

In our telephone conversation today, I referred to our telephone discussion of June 1991 and my letter of June 21, 1991 (copy attached), and asked whether, under similar but not identical facts, there would be an obligation to file premerger notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. As you requested, I am writing to set forth the new facts and the questions I posed to you.

Corporation A holds approximately 48% of the outstanding common shares of a [redacted] corporation (the "Issuer"). Corporation A and the Issuer meet the size-of-the-person test. Corporation A's sole investment is in the Issuer, but A's ultimate parent entity is an individual with investments in several enterprises. Neither Corporation A nor its ultimate parent entity regularly lends money.

An individual, X, owns 20% of the common shares of the Issuer. X does not control or have any interest in Corporation A. Under a shareholder agreement, X is entitled to name himself and one other individual as two of the four directors of the Issuer (and has done so), and Corporation A names the other two directors.

Corporation A made a substantial loan to X, which was secured by X pledging to Corporation A his 20% of the common shares of the Issuer (the "Pledged Shares"). The loan and pledge agreement was negotiated at arms' length. The loan is now in default. Were Corporation A to acquire the Pledged Shares through foreclosure, it may not resell those shares, either because of unfavorable market conditions or because if prefers to hold a larger stake in the Issuer.

Corporation A is now considering three options. My question is whether some or all of these options are exempt from premerger reporting under the HSR Rules.

1. Under the loan and pledge agreement, Corporation A may immediately vote X's shares "as pledgee". However, X could terminate this power to vote the shares by curing the default.

2. Under U.C.C. §9-505, Corporation A may give notice to X that it proposes to retain the Pledged Shares in satisfaction of X's debt. Title to the shares would automatically transfer to Corporation A unless X objected within 21 days.

3. Under U.C.C. §9-504, Corporation A may sell the Pledged Shares at a public sale; Corporation A intends to do this if X objects to Corporation A keeping the Pledged Shares under Option 2 above. Corporation A could, and probably would bid at the sale, and may be the highest, if not the only bidder. A would acquire full title and interest if it purchases the Pledged Shares at such a sale.*

In our conversation today, I suggested that, based on your earlier advice that a loan transaction of this nature met the definition of §802.63(a) of the Rules, a "bona fide credit transaction entered into in the ordinary course of the creditor's business," premerger reporting would not be required under any of these options, since all are, at most, "an acquisition of collateral . . . in foreclosure, or upon default, . . . by a creditor." I also suggested that under Option 1, where Corporation A votes the Pledged Shares only as pledgee, it would not make an acquisition of the shares thereby since (a) X would retain the beneficial interest of those shares, (b) cash dividends and proceeds from the disposal of the shares could only be applied to reduce X's debt, and (c) since X could cure the

---

* I recognize that if an person or entity other than A acquired the Pledged Shares, either at the public sale described above, or upon resale by A, premerger reporting may be required depending on the circumstances.

default at any time, the situation was analogous to a revocable proxy which is, to my understanding, not an acquisition under the Rules.

Once you have had an opportunity to review these facts and discuss them with your colleagues, I would appreciate your advising me whether the above-described options are exempt from reporting under the Rules. Thank you for your assistance and cooperation.

Sincerely yours,

[redacted]

[redacted]

3/17/92

Told writer that the proposed transactions would not be exempt under § 802.63 because A and Issuer do not stand in a creditor/debtor relationship upon though A and X do. The final proposed outcome -- where A obtains only the right to vote the stock -- would not be reportable in any case because there is no acquisition, V/R Ex. 1 and 2 to 802.63 seem very misleading in the context. These examples imply that acquisition of collateral upon default are always exempt whether they are acquisitions of assets or of the voting securities of another issuer.