

801.20  
C is probably not  
acquiring 50% of B.  
and B  
does not  
meet the  
size of 801.20

May 1, 1992

Via Federal Express

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

This material may be subject to  
the confidentiality provision of  
Section 7A (h) of the Clayton Act  
which restricts release under the  
Freedom of Information Act

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FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

Re: Notification Report Form for Proposed Stock Acquisition

Dear Mr. Schechter:

I am writing to confirm our discussion today as to whether a filing would be necessary under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. §18a, or the regulations promulgated thereunder, 16 C.F.R. §§801.1, et. seq., in connection with a proposed acquisition of voting securities. The proposed transaction is summarized below and in the attached diagram.

A owns B. B does not have regularly prepared financial statements; in fact, the only financial statement of B which has been prepared is a December 31, 1991 unaudited balance sheet which shows a book value of \$1.5MM. A and B believe that the assets of B currently have a fair market value of \$5.7MM. B does not have any sales.


[Redacted]

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C proposes to buy 1 share of B's common stock, which represents less than 1% of B's issued and outstanding common stock, for (i) \$1.00 and (ii) C's commitment to loan up to \$13.5MM to B. A will also provide B with a \$13.5MM loan commitment. A and C meet the size-of-the-parties test. A and C will also enter into agreements which give C rights with respect to (but not ownership of) additional shares of B's common stock which, together with the one purchased share, will equal 50% of the issued and outstanding common stock of B. B does not have any class of capital stock other than common stock. The loan commitments of A and C are subject to several criteria of performance which must be met before B is entitled to make draws under them.

We do not believe that the filing of a Notification and Report Form is required. First, an acquisition of a sufficient amount of the voting securities of B has not occurred. Only one share, representing less than 1% of the voting securities of B, will actually be purchased by C. Accordingly, the transaction does not meet the size-of-the-transaction test.

Second, even if we assume that the sale of one share of common stock together with the agreements between A and C constitute an "acquisition" of 50% of B's voting securities, the purchase price of the voting securities (even if the amount of C's loan commitment is included) will not exceed \$15MM. Therefore, a filing will be



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required only if B has total assets or annual net sales of \$25MM or more. This \$25MM threshold will not be met because (i) B's December 31, 1991 balance sheet indicates a total asset value of less than \$1.5MM, (ii) A and B in good faith place a market value on B's current assets of approximately \$5.7MM, and (iii) B does not have any sales. Accordingly, the transaction is exempt under Rule §802.20.

If I misinterpreted our conversation, I would appreciate being so advised as early as possible. Thank you for your assistance in this matter. If you have any questions, do not hesitate to contact me directly at [REDACTED] or at fax number [REDACTED]

Sincerely,

[REDACTED]  
[REDACTED]  
[REDACTED]

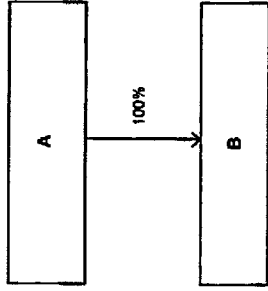
[REDACTED]  
enclosure

cc: [REDACTED]

[REDACTED]

**PROJECT**

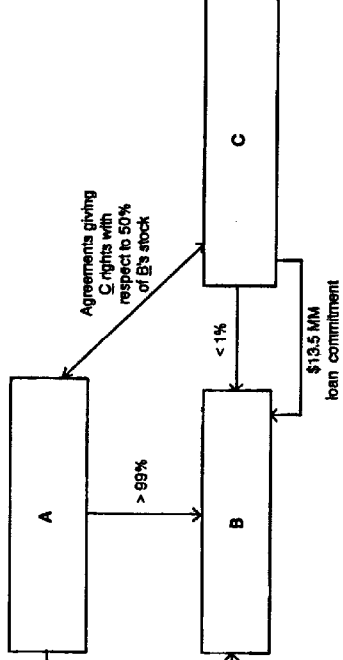
CURRENT



BOOK ASSETS < \$1.5MM

FMV ASSETS = \$5.7 MM\*

PROPOSED



BOOK ASSETS: Same but add \$1.00 paid to Subsidiary by Buyer for 1 share of stock

FMV ASSETS: Same but now have loan commitments from Buyer and Seller

\*Based upon good faith belief of Parent and Subsidiary.