

[REDACTED] ; 8-28-92 ; 12:12PM ; [REDACTED]

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801.1(c)(1)
801.2(a)
801.10

August 28, 1992

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FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

BY FAX: (202) 326-2050

Premier Notification Office
Room 303,
Federal Trade Commission
Washington, DC 20580

Attention: Ms. Nancy Ovuka

Dear Ms. Ovuka:

This letter outlines the facts pertinent to a proposed transaction to be entered into by our client. As we discussed, we would appreciate an informal interpretation as to whether the Premier Notification Office would consider the following described transaction not subject to the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). We would also welcome a formal interpretation.

FACTS

Buyer, A, enters into an agreement to purchase oil and gas wells from Seller, B. The purchase price stated in the agreement is \$20,000,000, but adjusted by various factors, primarily reflecting the net revenue from production from January 1, 1992 through the closing (which will occur sometime in late September or early October, 1992). As a result of the adjustments, the actual purchase price that will be paid at closing is substantially below \$20,000,000. Assume that the fair market value of the assets to be acquired does not exceed the actual adjusted purchase price paid. Assume that A and B satisfy the size of person test in § (a)(2) of the Act.

A has a contract with C that allows C to pay for and receive an undivided share of the interests to be acquired by A from B. C makes its election and forwards its share of the

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[REDACTED]

purchase price to A prior to the closing of the transaction between A and B. Because of the nature of the assets, the documentation for the conveyance of the assets is voluminous. For the convenience of B, A intends to receive from B a conveyance of the full interest to be purchased from B, and then will promptly (within approximately 30 days after the closing) convey C's share to C. There are no contingencies on A's obligation to convey C's share to C. A will hold C's interest for the benefit of C until A makes the conveyance to C, and C will begin receiving the benefits of ownership at the same time and manner as if C had received the interest directly from A at the closing.

A also is the general partner of a limited partnership, D. A owns less than 50% of the profits of the partnership and will receive less than 50% of its assets upon dissolution. The partnership has the right, under terms similar to those of C, to participate in the acquisition of interests from A. A will handle the assignment of interests to D in the same manner as it handles assignments to C.

If the acquisition price is considered to be the actual adjusted purchase price paid for the assets, and if the value of the assets to be conveyed to C and D are not considered to be "held" by A after the closing, the acquisition price, and by assumption the fair market value, of the assets held by A after the closing will be \$15,000,000 or less.

QUESTIONS AND ANALYSIS

1. Is the actual adjusted purchase price paid at closing the "acquisition price" for purposes of the regulations under the Act?

We believe that the actual adjusted price paid for the assets should be considered the "acquisition price" for purposes of Rule § 801.10. The preliminary purchase price does not represent the consideration paid for the assets, but merely the starting point for calculating the consideration. Since Rule § 801.10 states that the value of "all consideration" paid for assets will be considered to be the "acquisition price", the actual adjusted price should be considered to be the acquisition price.

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2. Will A be considered not to be "holding", for purposes of § (a)(3)(B) of the Act and Rule § 802.20(a), the portion of the assets that it must convey to C and D?

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We believe that A should be considered not to be holding the assets to be conveyed to C and D because it has an absolute obligation to convey these assets to C and D, and will hold the assets for the benefit of C and D until the formal conveyance. Rule § 801.1(c) states that "hold" means beneficial ownership. At no time will A hold the beneficial interest in the assets to be conveyed to C and D. Therefore, A should be considered not to be holding these assets.

Thank you for your prompt attention to this inquiry. Please call me at [REDACTED] or send a fax to [REDACTED] if you need further information.

Very truly yours,

[REDACTED SIGNATURE]

8/31 contacted [REDACTED] informed
him that we (including [REDACTED])

agree w/ [REDACTED] conclusions,
Specifically:

1. actual admission price as the consideration
2. A is merely acting as an "agent" for C & D.

This material may be subject to the confidentiality provisions of Section 2037 of the Internal Revenue Code, which restricts disclosure of information.

[REDACTED]