

802.63

January 13, 1993

JAN 13 1 3 PM '93  
FEDERAL TRADE  
COMMISSION  
GENERAL INVESTIGATION  
DIVISION

Ms. Nancy Ovuka  
United States Federal Trade Commission  
Washington DC 20580

Re: Application of Creditors Exemption (16 C.F.R. §802.63)  
from Notification Requirement of the Hart-Scott-Rodino  
Antitrust Improvements Act of 1976

Dear Ms. Ovuka:

This is to confirm your advice of January 11, 1992 with respect to the applicability of the creditors exemption from the notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") provided by 16 C.F.R. §802.63.

The situation we discussed is as follows:

1. Creditor is a large [redacted] firm which is in the business of making [redacted]. Creditor has assets in excess of \$100,000,000.
2. Creditor has loaned money to, and made [redacted] in, two related ventures, namely Partnership A and Partnership B. Schedule A attached hereto is a schematic diagram of Creditor's interests in the Partnerships.

PARTNERSHIP A

3. Partnership A is engaged in commerce other than manufacturing. It has assets in excess of \$15,000,000 but less than \$100,000,000.

This document is the subject of the confidentiality provisions of Section 7A (b) of the Clayton Act which restricts release under the Freedom of Information Act.

[Redacted footer line]

Ms. Nancy Ovuka  
January 13, 1993  
Page 2

4. The general partner of Partnership A is [REDACTED] Corporation A and the limited partner of Partnership A is [REDACTED] Corporation A. [REDACTED] Corporation A is entitled to 99% of the profits of Partnership A following the return of the capital invested in Partnership A by [REDACTED] Corporation A. 100% of the issued and outstanding capital stock of [REDACTED] Corporation A is held by Individual A.
5. Creditor holds an option to purchase nonvoting shares of [REDACTED] Corporation A representing 80% of the [REDACTED] Corporation A's issued and outstanding capital stock. Creditor has not exercised such option.
6. Creditor holds voting shares of [REDACTED] Corporation A which represents 80% of [REDACTED] Corporation A's issued and outstanding capital stock. Individual A holds the remaining 20% of such shares.
7. Creditor has loaned money to Partnership A. A commercial bank (since taken over by the FDIC) has also loaned money to Partnership A.
8. Partnership A is now insolvent. It has total liabilities in excess of the fair market value of its assets and it is unable to pay its debts as they come due.

*Does GP  
have right  
to 100% of  
profits  
until  
capital  
returned?  
If so, GP  
debt holds*

#### PARTNERSHIP B

9. Partnership B is engaged in commerce other than manufacturing. It has assets in excess of \$15,000,000 but less than \$100,000,000.
10. The general partner of Partnership B is [REDACTED] Corporation B and the limited partners of Partnership B are [REDACTED] Corporation B and [REDACTED] Corporation C. [REDACTED] Corporation B and [REDACTED] Corporation C are both entitled to 49.5% of the profits of Partnership B following the return of the capital invested in Partnership B by [REDACTED] Corporation B. 100% of the issued and outstanding capital stock of [REDACTED] Corporation B is held by Individual A and 100% of the issued and outstanding capital stock of [REDACTED] Corporation C is held by Individual C.
11. Creditor holds options to purchase nonvoting shares of both [REDACTED] Corporation B and [REDACTED] Corporation C, representing 80% of each such corporation's issued and outstanding capital stock. Creditor has not exercised such options.

Ms. Nancy Ovuka  
January 13, 1993  
Page 3

12. Creditor holds voting shares of [REDACTED] Corporation B which represents 80% of [REDACTED] Corporation B's issued and outstanding capital stock. Individual A and Individual C each hold 10% of such shares.
13. Creditor has loaned money to Partnership B. Two commercial banks (one of which is the bank which loaned money to Partnership A) have also loaned money to Partnership B.
14. Partnership B is insolvent. It has total liabilities in excess of the fair market value of its assets and it is unable to pay its debts as they come due.

WORK-OUT OF DEBT

15. A plan for the restructuring of Partnership A and Partnership B has been worked out among Partnership A, Partnership B, Creditor and the bank lenders of both Partnership A and Partnership B, the relevant components of which include the following:
  - a. Creditor shall, through its control of [REDACTED] Corporation A and [REDACTED] Corporation B, respectively, cause the liquidation of both Partnership A and Partnership B. Because both of the Partnerships are now insolvent and the [REDACTED] Corporations remain liable for all of the debts of the Partnerships, all of the Partnerships' respective assets will be distributed to the [REDACTED] Corporations; none of such assets will be distributed to the [REDACTED] Corporations.
  - b. Following such liquidations, [REDACTED] Corporation A will be merged with and into [REDACTED] Corporation B, with the result that Creditor will hold nearly 100% of the issued and outstanding capital stock of [REDACTED] Corporation B before dilution for management equity incentives and as a result of the warrant issued to the banks as described below.
  - c. In connection with such liquidations and merger, (i) the total bank debt will be reduced, (ii) Creditor will make an additional investment in [REDACTED] Corporation B, (iii) all existing indebtedness of Partnership A and Partnership B to Creditor will be converted into equity ownership

Ms. Nancy Ovuka  
January 13, 1993  
Page 4

interests in Corporation B and (iv) the banks will be issued a warrant to purchase a portion of the stock of [redacted] Corporation B in the event certain conditions are satisfied.

CONCLUSION

You confirmed that, because, inter alia, Creditor is a creditor which extended credit to the Partnership in the ordinary course of its business in a bona fide credit transaction and because the liquidation of the Partnerships and the subsequent merger of [redacted] Corporation A with and into [redacted] Corporation B as described above are being effected in connection with a bona fide debt work-out, such transactions may be effected without filing a notice under the Act by reason of the exemption from notification set forth in 16 C.F.R. §802.63(a).

*yes*

Please let me know if the foregoing conclusion is inconsistent with our previous discussions.

Thank you.

Sincerely,

[redacted signature block]

[redacted]

*1/13/93*

*Exempt under 802.63  
RS concurs.*

*nmc.*

# Schedule A

