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July 14, 1993

Patrick Sharp  
Federal Trade Commission  
Premerger Office  
Six Pennsylvania Avenue  
Washington, DC 20580

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FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

Dear Patrick:

This will confirm the details of the transaction I discussed with you this morning, at which time you indicated that you thought the Staff agreed with my conclusion that the acquisition by the Trust would be entitled to the investment exemption in 802.9 of the Rules.

Corporation A is acquiring Corporation B in a merger. B will become a wholly-owned subsidiary of A and the B stockholders will receive voting securities of A. The acquisition of B by A is a reportable transaction.

We represent a trust which is a stockholder of B that will receive in the merger voting securities of A worth more than \$15 million. As a result of the transaction, the Trust will hold less than 10% of the voting securities of A.

The Trust holds these shares for a number of beneficiaries. There are three individual trustees, none of whom have any beneficial interest in the shares held in the Trust. The Trust is an irrevocable trust without any reversionary interest since it was set up in the will of a founder of B who died many years ago.

Two of the three individual trustees will be elected directors of A pursuant to provisions of the Merger Agreement. The third trustee will not be a director of A.

Under [redacted] law, which governs the construction of the Trust instrument, all questions must be decided by unanimous vote of the three trustees unless the instrument otherwise provides. The instrument provides for two-thirds vote with respect to any accumulation of income (instead of distribution)

*I am not an attorney*

Patrick Sharp, Esq.

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and with respect to a "conflict of interest" transaction not here relevant. All other matters require unanimous vote of the trustees, and it has been the practice of the trustees in the past to act on that basis. However, I believe that a provision for two-thirds vote by the trustees would not change the conclusion that Rule 802.9 applies.

The Trust will hold these shares for investment, until distribution of principal is made to beneficiaries of the Trust, upon termination of the Trust in three years. In addition, none of the beneficiaries will be directors of A, although I do not see that this fact is necessary to a conclusion that investment intent applies.

Under the HSR rules, the holder of the voting securities of A will be the Trust and not the individual trustees (who are merely affiliates of the Trust). We believe the fact that affiliates of the Trust will be directors of A does not prevent the Trust from having investment purpose with respect to this transaction. Accordingly, we believe that the acquisition of voting securities of A by the Trust is entitled to the exemption in Rule 802.9. We would appreciate the Staff's concurrence in our conclusion.

If it is feasible for you, we would very much appreciate a speedy response as we need to communicate this conclusion to the corporate counsel for each of A and B who do not want the HSR process with respect to the acquisition by A of B to be delayed on account of this issue on the sidelines.

I look forward to hearing from you.

Sincerely,

[Redacted signature]

cc: Richard Smith, Esq.

*This scenario is not exempt under section 802.9. Trustees are comparable to officers or directors of a corporation. Therefore, the trustees of B becoming directors of A is inconsistent with the investment only intent of 802.9. see 801.1(I) (1) Statement of Basis and purpose #33465 file - (PS) staff concurs*

*17-16-93-He #11 file*