[redacted] P.02

§ 802.20(k)

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June 14, 1994

15 11:55 AM '94
FEDERAL TRADE COMMISSION PREMERGER NOTIFICATION OFFICE

Tom Hancock, Esq.
Premerger Notification Office
6th Street and Pennsylvania Ave., NW
Washington, DC 20580
FAX NO. (202)326-2050

Dear Mr. Hancock:

Further with respect to our telephone conversation today, enclosed is a copy of my "Memorandum to File" dated today which describes a merger and concludes that it is exempt under Paragraph 802.20 from Notification.

Assuming my facts as to assets, sales and market value of stock are correct, is my conclusion correct that no Notification need be filed by either of the two corporations involved in the merger?

Thank you.

Very truly yours,

[redacted]

[redacted]

6/16/94
Called Writer and told him this is OK.

T.F.H

[redacted] MEMORANDUM TO FILE
Dated June 14, 1994

Father owns over 70% of the stock of Corporation W with assets and sales of over $100,000,000.

Son owns 95% of the stock of Corporation M, with assets of $7,000,000 and sales of $11,300,000. (M has no subsidiaries or brother/sister corporations) 100% of the stock of Corporation M has a market value of less than $15,000,000.

It is proposed that W and M merge with surviving corporation to be W. Son's stock of W as a result of the merger will have a market value less than $15,000,000.

It appears that this transaction is exempt from the Premerger Notification requirements of Sec. 7A of the Clayton Act (15 U.S.C. 18A) as amended by Sec. 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 because of Exemption Rules under Section 802.20 minimum dollar value.

Such 802.20 provides as follows:

> "An acquisition which would be subject to the requirements of the act and which satisfies section 7A(a)(3)(A), but which does not satisfy section 7A(a)(3)(B), shall be exempt from the requirements of the act if as a result of the acquisition the acquiring person would not hold:
>
> (a) Assets of the acquired person valued at more than $15 million; or
>
> (b) Voting securities which confer control of an issuer which, together with all entities which it controls, has annual net sales or total assets of $25 million or more."

In this transaction, the acquisition/merger satisfies section 7A(a)(3)(A) because the acquiring person (the father) would hold more than 15% of surviving Corporation W, but does not satisfy section 7A(a)(3)(B) because the father would not have voting securities in the acquired person (M) in excess of $15,000,000 value.

The acquisition is exempt pursuant to 802.20(b) because the father would not, as a result of the merger have:

> control of M (issuer) with M having net sales or total assets of $25,000,000 or more.

Therefore, the acquiror Corporation W need not file Notification. In words of 802.20(b), after the merger, the father's control of the issuer (the son's prior business M) would be control of less than $25,000,000 sales and less than $25,000,000 net assets.

Further, M, because the son's stock in W after the merger would be valued at less than $15,000,000, need not file Notification.

[redacted]