

WRITER'S DIRECT DIAL NUMBER: [REDACTED]

April 18, 1995

I am not an attorney

Patrick Sharp, Esq.
Federal Trade Commission
Pre-Merger Office
Washington, DC 20580

Dear Patrick:

This is to confirm the transaction that I described to you Monday afternoon, and with respect to which you later called me back with the conclusion that the proposed acquisition of voting securities under the Plan of Reorganization in the Bankruptcy Court fell within the exemption in 802.63(a).

A Mutual Fund, an investment company registered under the Investment Company Act which is a high yield bond fund (the "Mutual Fund"), presently holds subordinated debt of the issuer. A substantial portion of this debt -- approximately 80% of the current holdings -- was acquired in 1992-93, most acquired directly from the issuer by the Mutual Fund at the time of the original issuance in 1992. The balance was acquired from time to time up through mid-January of 1995. In late January, 1995, the issuer filed for Chapter 11, principally because the carrying charges of the debt are too much for the business to bear. This Mutual Fund and some other mutual funds that are managed by the same investment company own, collectively, approximately 32% of the subordinated debt of the issuer.

Not a vulture capitalist

It is expected that the Plan of Reorganization for the issuer, once approved by the Bankruptcy Court, will provide that all of the voting common stock (which will be the only voting stock issued) of the issuer will be issued to the Mutual Fund and the other holders of the subordinated debt, who will thereby become equity holders rather than debt holders. It is expected that the Mutual Fund will acquire approximately \$28.7 million of the voting common stock, amounting to about 17% of the outstanding voting securities. (Certain other funds which have the same investment advisor will acquire in the aggregate approximately \$26 million of voting common stock, or an additional 15% or so, but no one of such other funds will acquire as much as 15% or \$15 million of voting common stock.) Each of the Mutual Fund and the other funds is publicly held and is its own ultimate parent for HSR purposes.

OK The creditors are forsaking debt claims in exchange for voting securities

Patrick Sharp, Esq.

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A representative of the management company for the Mutual Fund is on the Chapter 11 Creditors' Committee. Under the Plan of Reorganization, the Creditors' Committee selects the Board of Directors of the issuer as it will be constituted as of the issuer's emergence from bankruptcy. No director of the issuer will be an employee, representative or affiliate of the Mutual Fund or any of the other funds that have the same management company.

I submit that the acquisition of voting securities by the Mutual Fund as part of the Plan of Reorganization is exempt under Section C(11) of the HSR Act, which exempts "acquisitions, solely for the purpose of investment, by any . . . investment company . . . of (A) voting securities pursuant to a plan of reorganization or dissolution". You have indicated that the Premerger Staff presently does give advice with respect to Exemption C(11). However, it appears that the staff's reluctance relates to certain issues with respect to acquisitions of assets under Clause B of C(11) which is not involved in the above-described acquisition of voting securities.

You have indicated that the proposed acquisition of voting securities will be exempt from filing by virtue of 802.63, since it involves an acquisition of voting securities which is "in connection with a bona fide debt workout . . . made by a creditor in a bona fide credit transaction entered into in the ordinary course of the creditor's business".

It is my understanding from our conversation that the fact that the acquisition of the voting securities is pursuant to a Plan of Reorganization may be viewed as being in the ordinary course of business of the Mutual Fund under 802.63 since the Mutual Fund is a "bond fund". It is clear from the example to Rule 802.63 that the exemption covers the acquisition of voting securities. Consequently, it is my understanding, based on our second conversation of Monday afternoon, that the Staff agrees that the above-described transaction is exempt under 802.63(a).

I would appreciate your calling me to confirm that I have accurately recorded conclusions reached in our conversation of Monday afternoon. Your assistance is appreciated.

Sincerely

call [redacted] 4-24-95
we concur with this letter
including notes in the margin.

[redacted]

[redacted]

since the acquiring person is a
bonafide debtor prior to the
acquisition of v/s in a bonafide
debt work out, Section 802.63
can apply to this transaction.

(PS) (RS) (VC) (TH)