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February 19, 1998

BY TELECOPIER

Richard B. Smith, Esq.
Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Dick:

This letter confirms your advice regarding the Hart-Scott-Rodino reporting requirements of the transaction described below, as expressed in a telephone conversation with myself, [redacted] of our firm, and [redacted] February 11, 1998. If this letter in any way fails to reflect your views on the matter, please contact [redacted] or me as soon as possible.

Company "A" and Company "B" are publicly traded Canadian issuers, each of which is its own ultimate parent entity. A and B intend to effect a "Plan of Arrangement,"[1] pursuant to which: (i) A will acquire 100% of the outstanding voting securities of B (the "Acquisition") and, as consideration for the Acquisition, B's shareholders will receive shares of A common stock; and (ii) immediately following the Acquisition, the stock of B (which will have transferred some of its holdings to other subsidiaries of A) will be distributed on a *pro rata* basis to the shareholders of A (including the former shareholders of B). The Plan of Arrangement will be effected as follows.

Prior to the Acquisition taking place, B will reorganize its current holdings as follows:

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1 A Plan of Arrangement is a court supervised procedure, authorized by Canadian corporate law, by which a merger, acquisition or other combination may be effected.

- Certain of B's existing businesses and holdings will be transferred to "B-Sub1," a newly formed, wholly owned subsidiary of B; and

- Those holdings not transferred to B-Sub1 will continue to be held by B through several existing, wholly owed subsidiaries. These include certain of B's lines of business and a 26% (common stock) interest in a U.S. issuer "X," which is valued in excess of $15 million.

This pre-Acquisition reorganization will be an exempt, intra-person transaction.

Upon receiving the court's approval of the Plan of Arrangement, the parties will file certain documentation (the "Articles") with the appropriate Canadian authorities, which will give effect to the Plan of Arrangement and produce the following results:

- First, in the Acquisition, A will acquire 100% of the outstanding voting securities of B and the shareholders of B will acquire A common stock representing, in aggregate, approximately 50% of A's outstanding voting securities. A and B will file HSR notification for the Acquisition (as acquiring and acquired person, respectively) and, if necessary, additional filings will be made for the acquisition of A common stock by B's shareholders.[2]

- Second, B (which is now a wholly owned direct subsidiary of A) will transfer to A the stock of B-Sub1, such that both B and B-Sub1 will be direct, wholly owned subsidiaries of A. This transfer of shares will be an exempt, intra-person transaction.

- Third, the common stock of B will be distributed on a *pro rata* basis to the shareholders of A, which include the former public shareholders of B (the "Separation"). We understand that to the extent that any of A's shareholders will receive a reportable amount of B stock in the Separation, such acquisitions would be exempt from HSR reporting by virtue of § 7A(c)(10) of the HSR Act.

As a result of the foregoing events, (i) A will directly hold 100% of the outstanding voting securities of B-Sub1 and (ii) B will be a publicly traded company, the shares of which initially will be held by the shareholders of A (which include the former public shareholders of B).

Both the Acquisition and the Separation will become effective, substantially simultaneously, when the Articles are filed with the Canadian authorities. It is our understanding that both the receipt of court approval for the Plan of Arrangement and the

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2 The parties do not currently anticipate that any of B's shareholders will be required to file HSR notification in connection with their receiving A common stock.

effectiveness of the Articles (which will be filed within a few days of receiving court approval) are "all or nothing" propositions -- that is, neither the Acquisition nor the Separation can occur unless *both* occur. As a practical matter, this means that there is no possibility that A will have beneficial ownership of B (and the interests held by B at the time of the Separation) for more than the theoretical moment in time between the Acquisition and the Separation becoming effective.

Against this factual background, we raised two questions regarding the parties' HSR reporting obligations:

- First, must A file notification for the secondary acquisition of "X" common stock held by B (which A technically will hold for a moment in time as a result of the Acquisition, but will immediately divested, with B, in the Separation)?

- Second, in its HSR filing as acquired person in the Acquisition, should B include information relating to the holdings which will not be transferred to B-Sub1 in the reorganization (*i.e.*, those holdings that will remain with B and, hence, be divested along with B in the Separation)?

We understand that your response to both questions is "no." Specifically, you advised that A need not file HSR notification for the secondary acquisition of X's voting securities because there is no possibility that A will hold those securities for more than a brief, largely theoretical, moment in time. You further advised that B should exclude from its "acquired person" HSR filing information for the B businesses that will be spun off in the Separation. In order to avoid any confusion as to why this information is being excluded, we would propose that B describe both the Acquisition and the Separation in Item 2(a) of its filing, and also cite our conversation and this confirming letter.

If this letter in any way fails to reflect your views on the matter, please contact [redacted] at [redacted] or me (at [redacted]) as soon as possible. Otherwise, we will prepare our clients' respective HSR filings in accordance with the foregoing.

Very truly yours,

[redacted]

cc: [redacted]

2/23/98 Called writer and advised that the PNN Office would welcome the ~~auto-fully~~ reportable secondary acquisition of X's stock in the reportable A/B filing since the right-off of the X stock is assured.
FBSmith