

SENT BY:

2-25-98 6:49PM

[REDACTED]

[REDACTED]

WRITER'S DIRECT LINE

**FACSIMILE COVER LETTER**

FOR: Mr. Patrick Sharpe  
Premerger Notification Office  
Federal Trade Commission

FROM: [REDACTED]

RETURN TO: [REDACTED]

LOCATION: Washington, D.C.

DATE: February 25, 1998

REFERENCE: [REDACTED]

FACSIMILE No [REDACTED]

TOTAL NUMBER OF PAGES TRANSMITTED INCLUDING COVER:

COMMENTS:

RECEIVED BY [REDACTED] FEB 25 1998  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20540

98 FEB 25 PM 7 30

FEDERAL TRADE COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

1110  
98-1471

JRC

[REDACTED]

11 20

**FACSIMILE DELIVERY INSTRUCTIONS**

This facsimile contains information which (a) may be LEGALLY PRIVILEGED, PROPRIETARY IN NATURE, OR OTHERWISE PROTECTED BY LAW FROM DISCLOSURE, and (b) is intended only for the use of the Addressee(s) named below. If you are not the Addressee, or the person responsible for delivering this to the Addressee(s), you are hereby notified that reading, copying or distributing this facsimile is prohibited. If you have received this facsimile in error, please telephone us immediately and mail the facsimile back to us at the above address. Thank you.

**MATTER NO:** [REDACTED]

**FROM:** [REDACTED]

**PLEASE DELIVER THE FOLLOWING:**

**TO:** Joseph Krauss, Esq.

**COMPANY:** Federal Trade Commission

**DATE:** February 24, 1998

**DIRECT DIAL:** [REDACTED]

**FAX NO:** 202/326-2624

**PHONE NO:**

**TOTAL NUMBER OF PAGES:** 3 (including this page)

**MESSAGE FROM SENDER:**

**IF YOU DO NOT RECEIVE ALL MATERIAL, PLEASE CALL 314/259-2465**

3 802.60

COMMUNICATIONS SECTION  
FEDERAL TRADE COMMISSION

[REDACTED] L

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

February 26, 1998

Via Facsimile

Joseph G. Krauss, Esq.,  
Premerger Notification Office,  
Federal Trade Commission,  
Bureau of Competition,  
Sixth Street and Pennsylvania Avenue, N.W.,  
Room 388,  
Washington, D.C. 20535.

FEB 26 11 11 AM '98

Re: Interpretation of the "Securities  
Underwriter" Exemption (16 C.F.R. § 802.60)  
Under the Hart-Scott-Rodino Antitrust

Dear Mr. Krauss:

Further to my July 8, 1997 letter to Richard B. Smith, Esq. and our recent conversations and in-person discussions, I write pursuant to 16 C.F.R. § 803.30 to request the issuance of an interpretation of the rules promulgated under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, (the "Act"). As we have discussed, it is requested that the Premerger Notification Office (the "PNO") confirm that the "securities underwriter" exemption (16 C.F.R. § 802.60) applies to all acquisitions of voting securities by broker-dealers for the purposes of resale in the ordinary course of business.

Specifically, for the reasons addressed in my July 8 letter, it is requested that the PNO issue an interpretation of the "securities underwriter" exemption clarifying that the

provision extends to any acquisition of voting securities for the purposes of resale in the ordinary course of business if the entity making the purchase is either:

(a) a registered "broker" or "dealer" within the meanings of 15 U.S.C. §78c(a)(4) or § 78c(a) 5, or a person that would be required to be so registered in the absence of an exemption under the Securities Exchange Act of 1934 (the "Exchange Act") or the rules promulgated under that statute; or

(b) i. a non-United States entity, including a United States entity engaged in business as a broker or dealer entirely outside the United States, or engaged in business in the United States as permitted by Rule 15c-6 promulgated under the Exchange Act, whose activities, if conducted in the United States, would be described by the definitions of "broker" or "dealer" within the meanings of 15 U.S.C. §78c(a)(4) or § 78c(a)(5); or  
(ii) a non-United States resident affiliate of such entity.

As is described in my July 8 letter and as we discussed during our telephone conversation on November 21, 1997 and during several of our recent meetings, there do not appear to be any issues of anti-trust enforcement or policy that support withholding the requested clarification. The types of acquisitions that would be covered by the interpretation are akin to other activities conducted in the ordinary course of business by entities that are engaged in securities underwritings or distributions.

Treating all such acquisitions similarly for purposes of the notification and waiting period requirements (the "Requirements") of the Act would yield the following benefits, among the others discussed in my July 8 letter. First, such an interpretation would provide much-needed certainty regarding the applicability of the "securities underwriter" exemption to transactions that occur under circumstances requiring a swift, even instantaneous, determination as to whether the acquisition would be subject to the Requirements. Second, providing the requested clarification would ensure that firms that regularly make such

Joseph G. Krauss, Esq.

-2-

acquisitions may do so on a basis that allows them to compete effectively with their Insign-based counterparts.

As we discussed during our telephone conversation, clarifying that such acquisitions are exempt from the Requirements would not create a loophole that would include transactions that might give rise to significant competitive concerns. The proposed clarification would retain the requirements of the "securities underwriter" exemption that the acquisition be conducted (i) for purposes of reselling the securities and (ii) in the ordinary course of the business of the acquirer. You confirmed during our telephone conversation that the exemption would apply even if the acquirer were unable actually to resell the securities because of such factors as adverse market changes as long as the purpose of the acquisition was to obtain securities for resale promptly in the ordinary course of business. As a result, even under the requested interpretation, the range of acquirers and acquisitions that would be covered under the "securities underwriter" exemption would remain substantially narrower than those eligible for the "institutional investor" exemption codified at 16 C.F.R. § 202.64.

We appreciate your continuing attention to, and consideration in, this matter.

Very truly yours,

A large black rectangular redaction covers the signature and name of the sender. A small white square is visible in the center of the redacted area.

cc: Catherine McGuire, Esq.  
(Securities and Exchange Commission)

Maryanne Kane, Esq.  
(Federal Trade Commission)

David Cavicke, Esq.  
(Commerce Committee,  
United States House of Representatives)

3/24/28

- Advised writer that Board Office  
agrees with position and conclusions  
in letter; hereby that Securities  
underwriter exemption of § 802.62  
applies to all acquisitions of  
Voting Securities by broker-dealers  
for the purpose of resale in the  
ordinary course of business.

JOK

\*also confirmed w/ writer that  
letter requested on informal interpretation only.

JOK