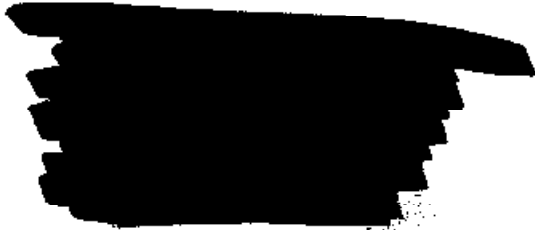


806.11(8); 804.42; 804.01, 001.00



WRITER'S TELEPHONE



April 26, 1999

VIA MESSENGER

Richard B. Smith
Premerger Notification Office
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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1999 JUN 25 10 12 30

PREMERGER NOTIFICATION
OFFICE
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Re: "White Squire" preferred shares

Dear Mr. Smith:

The following is a summary of the information I discussed with you on the phone last Wednesday.

A limited partnership investment fund (the "Acquiring Person") is proposing to acquire Series B Preferred Stock of a company (the "Acquired Person") valued at \$40 million as well as an option to acquire up to \$15 million in shares of Series C Preferred Stock of the Acquired Person. The Series B Preferred Stock will be convertible into common stock after three years at the option of the Acquiring Person and must be converted to common stock after five years. The Series B and C Preferred Stock are both being issued by the Acquired Person.

The Series B Preferred Stock Certificate provides that this stock will have no vote for directors (or even for many general corporate matters) until after an HSR filing has been made and the HSR waiting period expires. Specifically, the Certificate provides that "After the HSR Expiration Date, but only after the HSR Expiration Date, Holders of shares of the Series B Preferred Stock shall be entitled to vote upon all matters upon which holders of Common Stock have the right to vote . . . [and] to elect one member of the board." The Series C Preferred Stock will contain the same language.

The Acquiring Person plans to acquire the Series B Preferred Stock and the option on the Series C Preferred Stock in the next few days. At this point the Series B Preferred Stock has no present right to vote for directors. Shortly thereafter, the Acquiring and Acquired Persons plan to



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file HSR Notification and Report Forms. After termination of the HSR waiting period, the Series B Preferred Stock will automatically have a present right to vote for a director.

We believe that no HSR filing is required for the acquisition of the Series B Preferred Stock or the option to acquire the Series C Preferred Stock.

Pursuant to Rule 801.1(f), the Series B Preferred Stock would be considered a convertible voting security. Though the Series B Preferred Stock will have the right to vote for a director once an HSR filing has been made and the waiting period expires (or if it is converted to common stock at some point in the future), until one of those events occur, the Series B Preferred Stock has no right to vote for a director. Rule 802.31 exempts acquisitions of convertible voting securities.

Interpretation 98 of the Premerger Notification Practice Manual discusses a situation virtually identical to the one described in this letter, where "white squire" shares convert into fully voting shares upon expiration of the HSR waiting period. The interpretation states that the PNO staff treats the expiration of the HSR waiting period itself as a conversion under the rules. Thus, prior to the conversion, these "white squire" shares are simply convertible voting securities, the acquisition of which is exempt from the HSR filing requirements.


The acquisition of the option to acquire the Series C Preferred Stock in the future is not reportable. See Interpretation 51 of the Premerger Notification Practice Manual. As in the case of the Series B stock, once the Acquiring Person exercises the option for the Series C shares, files its HSR form and the HSR waiting period has expired, the Acquiring Person will be able to vote the Series C shares.

I would appreciate it if you would confirm the conclusion that no HSR filing is required to acquire the Series B Preferred shares or the option on the Series C shares.

Thank you very much for your assistance.

Sincerely yours,



cc:  4/26/99. Called writer and agreed with his conclusions. Confirmed that regarding Person would need to file as an 801.30. RBS