

802.9

This material may be subject to the  
confidentiality provisions of section  
7A(b) of the Clayton Act which prohibits  
disclosure under the provisions of subsection  
A-1

June 25, 1999

**BY HAND DELIVERY**

B. Michael Verne, Esq.  
Premerger Notification Office  
Room H-301  
Federal Trade Commission  
6th Street & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE  
1999 JUN 25 P 3: 18

Dear Mr. Verne:

This letter will confirm the telephone conversation that we had yesterday with respect to application of the investment-purposes-only exemption under 15 U.S.C. § 18a(c)(9).

As we discussed, this firm represents an individual who intends to sell two corporations that he controls to a large corporation ("Issuer"). The individual is a \$10 million person and Issuer is a \$100 million person. Issuer, as an acquiring person, and the individual, as an acquired person, will each be making a filing under the Hart-Scott-Rodino Act with respect to Issuer's acquisition of the corporations controlled by the individual. The purpose of this letter is to confirm that the individual need not make a filing as an acquiring person as well.

As part of the consideration for the two corporations controlled by the individual, Issuer will be providing to the individual (and to certain other persons involved in the transaction) voting securities of Issuer. As a result of the transaction, the individual (but no other person involved in the transaction) will hold voting securities of Issuer with a value in excess of \$15 million. The voting securities of Issuer held by the individual, however, will not exceed 10 percent of the outstanding voting securities of Issuer.

It is the intention of the individual and Issuer that, following completion of the transaction, the corporations currently controlled by the individual will continue to exist and be owned by Issuer as subsidiaries of Issuer. The individual will not serve

[REDACTED]  
B. Michael Vorne, Esq.  
June 25, 1999  
Page 2

as a director of the subsidiary corporations, but the individual will serve as an officer of the subsidiary corporations. In addition, the individual may serve as an officer of another subsidiary of Issuer, but the individual will not serve as a director of that subsidiary or of any other subsidiary of Issuer, or of Issuer itself.

In spite of the fact that the individual will serve as an officer of one or more subsidiaries, the individual has no intention of participating in the formation, determination, or direction of the basic business decisions of Issuer. It is anticipated that the business that the individual will manage for Issuer will represent less than one-half of one percent of the business of Issuer.

You told me that, under these facts, the individual should qualify for the investment-purposes-only exemption of 15 U.S.C. 18a(c)(9) and 16 C.F.R. § 801.1(i)(1). You stated that an individual who serves as a director of an issuer or any of its subsidiaries does not qualify for the investment-purposes-only exemption. You also stated that an individual who serves as an officer of one of the subsidiaries of an issuer is presumed to have an intention of participating in the formation, determination, or direction of the basic business decisions of the issuer, but that this presumption may be rebutted. Based on our conversation, it is our understanding that where, as here, an individual serves as an officer but not as a director of one or more corporate subsidiaries and the aggregate sales of those subsidiaries represent only approximately one-half percent of one percent of the revenue of the parent corporation and the officer will not participate in the management of the issuer's parent corporation, it is the view of the staff of the Premerger Notification Office that that individual's acquisition of voting securities from the issuer is exempt under 15 U.S.C. § 18a(c)(9). Accordingly, it is our understanding that the individual in this case would not be required to make a Hart-Scott-Rodino filing as an acquiring person in connection with the individual's acquisition of voting securities of Issuer valued in excess of \$15 million.

*Handwritten note:*  
should be  
in the investment  
purposes only  
exemption

If my understanding is in any way inaccurate, please contact me as soon as possible.

I look forward to speaking with you soon to confirm that the matters set forth in this letter accurately reflect the conversations that we have had on this matter. My telephone number is [REDACTED].

[REDACTED]

B. Michael Verne, Esq.  
June 25, 1999  
Page 3

Thank you for your consideration of this matter.

Sincerely,

[REDACTED]

[REDACTED]