

802.20

[REDACTED]

*I am not an attorney*

July 20, 1999

614-464-6451

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FEDERAL TRADE COMMISSION  
MERGER DIVISION  
OFFICE  
JUL 23 P 12:40

Patrick Sharpe, Esq.  
Premerger Notification Office  
Bureau of Competition, Room 303  
Federal Trade Commission  
6<sup>th</sup> Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Producers Livestock Association—Filing under the Hart-Scott-Rodino  
Antitrust Improvements Act of 1976

Dear Patrick:

Our client, [REDACTED], an Ohio corporation organized and deemed nonprofit under Chapter 1729 of the Ohio Revised Code, and is headquartered in [REDACTED] is a [REDACTED] cooperative corporation organized under Chapter 274 of the Revised Statutes of Missouri, and is headquartered in Marshall, Missouri ([REDACTED]). Neither [REDACTED] or [REDACTED] have shareholders as both are non-stock cooperative associations [REDACTED] and [REDACTED] intend to enter into a statutory merger under Section 1729.36 of the Ohio Revised Code and the corresponding provisions of Missouri law, under which [REDACTED] would be the survivor.

Previously, I contacted you and we discussed this proposed transaction for the purpose of determining whether the transaction would require a filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"). The purpose of this letter is to confirm our conversation.

Without making a determination of whether the parties to this transaction and the transaction itself meet the "Size of the Parties" test and the "Size of the Transaction" test under the Act, we believe that the proposed transaction will be exempt from the reporting requirements of the Act pursuant to Federal Trade Commission Rule 802.20 (the "Minimum Dollar Value Exemption"). In particular, you informed me that this transaction should be viewed as an "asset transaction" for the purpose of determining whether a filing is required under the Act. Under Federal Trade Commission Rule 802.20, the proposed transaction will be exempt from the Act if:

"as a result of the transaction, the acquiring person [i.e., [REDACTED]] will not hold assets of the acquired person [i.e., MFA] valued at more than \$15 million."

[Redacted]

As you know, under the Act, the value of assets (or in this case the value of the business) to be acquired is deemed to be the greater of the fair market value of such business or, if previously determined, the acquisition price. Because the proposed transaction is contemplated to be structured as a merger under which there would be no distribution to members in respect of their membership interests in [Redacted] as such, there will be no "acquisition price." Consequently, the value of the business to be acquired by [Redacted] will be the fair market value of the business of [Redacted].

*this is not fair market value*

In analyzing this transaction, the management of [Redacted] completed two valuations of [Redacted] based upon (1) the book value of [Redacted] and (2) a multiple of [Redacted]'s "net savings" (the analogue to "earnings" in this type of business organization) calculated at seven times net savings for the most-recently-completed fiscal year. In both cases, the fair market value of [Redacted] was determined to be no greater than \$3.5 million. Based upon this information, we believe that this proposed transaction should be exempt from the reporting requirements of Act pursuant to the Minimum Dollar Exemption.

*we have never defined the method of fair market value. However, not book value.*

We understand that under the Act, the fair market value of a business to be acquired must be determined in good faith by the Board of Directors (or persons exercising similar functions) of the acquiring person or by an entity designated that function by the Board of Directors of the acquiring person. We also understand that such determination must be made as of any day within 60 calendar days prior to the filing of a notification required by the Act or, if such notification is not filed, within 60 days prior to consummation of the proposed transaction.

*collect*

We would appreciate it if you would call me at [Redacted] if you believe that we are not entitled to an exemption from the reporting requirements under the Act based upon the information that we have provided above.

We very much appreciate your attention to this matter.

Very truly yours,

[Redacted signature]

[Redacted]

[Redacted]

*called [Redacted] 7/23/99 and left message I concur with the conclusion exceptions noted. (PS)*

[Redacted]