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January 26, 1983

BY HAND

Mr. Dana Abrahamson, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission, Room 303
Washington, D.C. 20580

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PRE MERGER NOTIFICATION OFFICE

Dear Mr. Abrahamson:

This letter requests confirmation of our conclusion that the parties to a proposed merger (described below) need not file premerger notification forms or otherwise comply with the provisions of the Hart-Scott-Rodino Antitrust Improvements Act (the "Act") and the regulations promulgated thereunder.

Facts

Our client, Corporation A, is a publicly-held company that recently entered into an agreement to merge with a newly-formed company, Corporation B. None of the shareholders of Corporation A own 50 percent or more of the outstanding common stock of Corporation A. The merger agreement provides that Corporation B will merge with and into Corporation A, which will be the Surviving Corporation. Each outstanding share of common stock of Corporation A will be converted into a right to receive cash plus debentures of the Surviving Corporation. Each share of common stock of Corporation B will be converted into a newly issued share of common stock of the Surviving Corporation.

[illegible] material may be subject to [illegible] Act

Corporation A is engaged in commerce and, as of September 30, 1982, the date of its last regularly prepared balance sheet, had total assets of over $150 million. Corporation B, formed in October 1982 solely to effect the merger, has no ongoing business activities, and has only $30,000 of assets received by it in payment for shares of common stock. The shareholders of Corporation B are an investment banking firm and four individuals, none of whom owns 50 percent or more of the outstanding common stock of Corporation B.

Corporation B intends to borrow the consideration required to effect the merger. In January 1983, Corporation B received and accepted a commitment letter from a bank agreeing to provide Corporation B with $116 million to enable Corporation B to pay the shareholders of Corporation A the cash to which they are entitled pursuant to the terms of the merger agreement (approximately $66 million), to extinguish existing debt of Corporation A (approximately $25 million), to provide working capital for the Surviving Corporation (approximately $20 million) and to pay costs and expenses of the merger (approximately $5 million).

Discussion

It is our conclusion that the parties to the proposed merger are not subject to the Act and regulations promulgated thereunder. At the effective time of the merger, Corporation B will have only $30,000 of assets other than the funds it will borrow ($116 million) to effect the merger. It is our understanding that the Premerger Notification Office Staff has taken the position that funds to be used as consideration for an acquisition should be applied either towards the calculation of whether a corporation meets the size of the person test or the calculation of whether an acquisition meets the size of the transaction test, but not both. Applying the financing funds to determine the size of the transaction leaves only $30,000 of assets to be used when applying the size of the person test to Corporation B. With only $30,000 of assets, Corporation B does not meet the size of the person test (requiring at least $10 million of assets) that would subject the parties to the proposed merger to the provisions of the Act.

I understand that it is the practice of your office to provide oral responses to letters such as this. I would appreciate it if you could provide me with your response in this matter as soon as possible. If you need further information or if I can be of any other assistance, please do not hesitate to call me.

Yours very truly,

Kathleen M. Russo

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