



July 21, 1983

BY TELECOPIER

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Federal Trade Commission
Washington, D.C. 20580

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FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

Re: Informal Advice

Dear Dana:

During our conversation on July 20, 1983, you rendered informal advice as to the following questions:

1. Where an acquiring person is making a reportable purchase of voting securities and is also purchasing warrants to acquire additional voting securities, may the filing be made for the higher threshold which would be crossed upon exercise of the warrants?

You responded that, where a person has a good faith present intention to cross any threshold, the filing can be made for a higher threshold which may be crossed pursuant to the exercise of such warrants. Consequently, the acquiring person may exercise such warrants at any time during the year following expiration of the applicable waiting period without making a new filing.

2. What is the proper method of responding to Items 2(a) and 3 when reporting the purchase of voting securities and warrants that upon exercise result in the acquisition of additional voting securities?

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The response should separately reflect the purchase of: (i) voting securities, together with the consideration to be paid for such securities; and (ii) warrants, setting forth the required information as to the additional voting securities to be acquired upon their exercise.

3. Where a letter of intent has not indicated the number of shares to be acquired by each of two acquiring persons and only one of the acquiring persons will be making a reportable purchase, how should such information be reflected in the filing?

You indicated that as to Item 1(c), both acquiring persons should be identified. In the course of describing the transaction in response to Item 2(a), it should be explained that only one of the acquiring persons is making a reportable acquisition.

4. Where a letter of intent has been entered into by an issuer (the acquired person) and the letter of intent makes reference to both a purchase of voting securities from the issuer and a purchase of voting securities from an officer of the acquired person, is it necessary to give notice to the issuer and supply an affidavit pursuant to §803.5(a)?

You responded that where the agreement is between an acquired issuer and the acquiring persons and such agreement includes a reference to a purchase from an officer of the issuer, it is not necessary to give notice and supply a §803.5(a) affidavit. Where, as in the instant situation, most of the voting securities are to be acquired from the issuer and the agreement executed by the acquired issuer makes clear that the issuer has knowledge of the purchase of voting securities from the officer, the transaction would not be considered a §801.30 transaction.

Thank you for your assistance. I believe that the above discussion summarizes the substance of our July 20, 1983 conversation. If it does not, please contact me as soon as possible.

Sincerely,

A large, dark, rectangular redaction covering the signature and name of the sender.A small, dark, rectangular redaction, likely covering a name or title.

Re ~~_____~~ letter of July 14, 1983.

7/26/83

Letter is correct
but we hereby

ICC

ask for copies of
exemption request
& send letter if request
granted

we assign # + que c 5
letter +

- When exemption ~~is~~
granted we wipe it off
books (i.e. computer)

no summary sheet prepared.

Purpose is to avoid
compliance letter in
case someone picks
up magazine in press
or elsewhere.
ask about it

I spoke to ~~_____~~
& he will have ~~_____~~
ff above procedure.

Wayne Kopla

7/26/83

John

John + Dana
Concur 7-26-83

Problem: who has Beneficial ownership
in the attached situation,
the client or the broker?

The situation is identical to
the attached example with the
exception that the Client & Broker have
an agreement that the Broker can buy
and sell and vote voting securities
and it can't be revoked for 90-days.

Fed. Reg. §. 33458

Beneficial ownership is determined by:

1. Risk of Loss / Benefit of gain
2. ~~power~~ ^{right} to vote
3. investment discretion.

The attached informal interpretation
indicated that the client had beneficial
ownership. However, this transaction seems
more finely balanced. My feeling is that the
client ultimately has the right to revoke.
Thus, has beneficial ownership.

Patrick