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VIA TELECOPIER
AND MAIL

This material may be subject to the confidentiality provision of Section 7A (h) of the Clayton Act which restr[illegible]

Dana Abrahamsen, Esq.
Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: February 6, 1984 Telephone Conversation

Dear Dana:

In a conversation yesterday, I requested an informal opinion with respect to the following factual situation:

Partnership A, a partnership consisting of individual officers of Target ("Target"), will form Financing Partnership ("FP"), a partnership whose general partner is Partnership A, and whose limited partners will consist of various pension funds. FP will form and wholly-own Newco, a corporation.

Pursuant to a merger agreement, either FP or Newco will acquire all of Target's voting securities from Target's shareholders for a purchase price of approximately $100 million. Of this total, $45 million will be provided by Bank loans, $45 million by the pension fund limited partners of FP, $9.75 million from Target's working capital, and $250,000 from Partnership A. Neither FP nor Newco have a regularly prepared balance sheet, and neither FP nor Newco will have $10 million in assets apart from assets borrowed or contributed to pay for Target's voting securities. The acquisition of Target's voting securities will be effected pursuant to a merger of Newco into Target, with Target as the surviving corporation. Target will then be liquidated and its assets held by Financing Partnership.

[redacted]

Issue

Is a Hart-Scott Premerger Notification and Report Form required to be filed in connection with the above transaction?

Discussion

You have advised that a filing is not required for the above-described transaction. The formation of a partnership, i.e. FP, is exempt from the Act; the formation of Newco by FP is exempt because FP controls Newco (the intra-person exemption, §802.30); and the acquisition of Target by FP or Newco is exempt because neither FP nor Newco meets the size of person test.

The size of person test is not met because, for purposes of the size of person test, the total assets of an acquiring person without a regularly prepared balance sheet do not include assets that are collected or borrowed solely for use as the consideration for an acquisition. Thus, neither FP nor Newco has total assets of $10 million, and neither satisfies the jurisdictional size of person test.

I believe that this letter accurately describes our conversation and the informal opinion which you rendered. If it does not, please contact me as soon as possible.

Sincerely,

[redacted]

[redacted]