7A(c)(10)
801.12
801.10

March 10, 2000

BY FACSIMILE AND FIRST CLASS MAIL

Mr. Michael Verne
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: HSR Advice

Dear Mike:

I am writing to confirm our telephone conversation on March 8, 2000. The hypothetical and questions I posed to you and your conclusions are described below.

X holds securities in issuer Y. Y is its own ultimate parent entity. Y is planning to have an initial public offering ("IPO"). X is planning to acquire additional shares of Y voting securities during Y's IPO. Presently an IPO price range has been set. If the actual IPO price is at the midpoint of the price range, X's percentage of Y's total outstanding voting securities will actually decrease on the day of Y's IPO when X acquires additional shares of Y securities.

You have confirmed to me in previous telephone conversations that in situations in which an acquiring person holds voting securities of an issuer before an IPO (or even a secondary public offering), and acquires additional voting securities of that issuer during the IPO (or secondary public offering), the acquiring person need not file a HSR notification to report its acquisition of additional shares during the IPO (or secondary offering) so long as the acquiring person's percentage of that issuer's outstanding voting securities does not increase at the closing of the IPO (or secondary public offering). See 15 U.S.C. § 18a(c)(10). It is not necessary to determine if the acquiring person actually does, or technically could, acquire

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additional shares of the issuer's voting securities before some or all other investors purchase the issuer's shares during the IPO (or secondary public offering). It is sufficient to compare the acquiring person's percentage holdings of the issuer's outstanding voting securities prior to the IPO (or secondary public offering) with its percentage holdings of the issuer's outstanding voting securities upon the closing of the IPO (or secondary public offering) to determine if the c(10) exemption applies.

We discussed the possibility that X's percentage of Y's outstanding voting securities could actually increase at the closing of Y's IPO if the actual IPO price is much higher than currently anticipated because Y would issue less shares in this situation. You indicated that X would not have to file a HSR notification if (1) it has made a good faith determination in writing of the expected IPO price for Y's shares within 60 calendar days prior to the close of Y's IPO and (2) X's acquisition of shares of Y's voting securities during the Y IPO would not be reportable because thresholds would not be satisfied or an exemption would apply under the IPO price predicted by X in good faith (regardless of what the actual IPO price is).

Please call me to confirm that my understanding of your conclusions as described above is accurate. As always, thanks for your help.

Sincerely,

AGREE WITH THE WRITER'S CONCLUSIONS, M. BAUND CONCURS.
3/10/00