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ATTORNEY AT LAW
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&
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A PROFESSIONAL CORPORATION

801.1(e)

March 16, 2000

VIA EMAIL & U.S. REGULAR MAIL
B. Michael Verne, Esq.
Premerger Notification Office, Room H-301
Federal Trade Commission
6th Street & Pennsylvania Avenue, NW
Washington, DC 20580

RE: Follow-Up Telephone Discussions

Dear Mike:

Thank you again for discussing with me the application and scope of Rule § 801.11(e)(1)(i)-(ii) in determining the total assets held by a natural person who is acquiring voting securities of an acquired person and who does not have a regularly prepared balance sheet. This letter is to summarize our discussions concerning the application of the filing and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), to the fact scenario described below.

> Company A, Company B, and Newco propose to enter into an Agreement pursuant to which Company A and Company B will each become a subsidiary of Newco which will be formed by Company A solely for the purpose of completing the transactions contemplated (the "Transaction"). To effect the Transaction, (i) Newco will form two wholly-owned subsidiary corporations ("A Sub" and "B Sub," respectively), (ii) A Sub will merge with and into Company A with Company A being the surviving corporation of such merger, and (iii) B Sub will merge with and into Company B with Company B being the surviving corporation of such merger. Upon the effectiveness of the Transaction, all of the issued and outstanding capital stock of Company A and all of the issued and outstanding capital stock of Company B will be converted into common stock of Newco (the "Newco Common Stock"). Pursuant to this stock conversion, certain shareholders of Companies A and B will receive Newco Common Stock valued at more than $15 million. Prior to the Transaction, Newco will conduct no business operations or own any assets.

As we discussed, the proposed Transaction is a consolidation, as opposed to a merger, for HSR Act purposes. We concluded that the consolidation would be reportable under the HSR Act with Companies A and B being both acquiring and acquired parties of the voting securities of Companies A and B respectively. However, as we discussed, and for the reasons set forth in this letter, you agreed that the

conversion of the outstanding capital stock of Companies A and B into Newco Common Stock would not be subject to the HSR Act requirements.

We concluded that the conversion of the outstanding capital stock of Companies A and B into Newco Common Stock would be deemed to be an acquisition of Newco Common Stock by the shareholders of Companies A and B and that each shareholder acquisition would need to be separately examined to determine whether the acquisition of the Newco Common Stock by the individual shareholder would be reportable under the HSR Act.

If an individual shareholder of Company A or B receives Newco Common Stock valued at more than $15 million, the size-of-the-transaction test is met. In addition, because Companies A and B will be wholly-owned subsidiaries of and deemed to be within Newco at the time the shareholders receive Newco Common Stock, the assets and annual net sales of Companies A and B will be attributed to Newco, which will result in Newco satisfying the $100 million annual net sales and/or total assets size-of-person threshold.

Therefore, we examined whether any of the shareholders of Companies A or B who are receiving Newco Common Stock valued at more than $15 million holds assets in excess of $10 million. For the shareholders who do not have a regularly prepared balance sheet, Rule § 801.11(e) states the following:

> Subject to the limitations of paragraph (d) of this section, the total assets of:
>
> (1) An acquiring person that does not have the regularly prepared balance sheet described in paragraph (c)(2) of this section shall be, for acquisitions of each acquired person:
>
> (i) All assets held by the acquiring person at the time of the acquisition,
>
> (ii) less all cash that will be used by the acquiring person as consideration in an acquisition of assets from, or in an acquisition of voting securities issued by, that acquired person (or an entity within that acquired person) and less all cash that will be used for expenses incidental to the acquisition, and less all securities of the acquired person (or an entity within that acquired person).

As we discussed, you have confirmed that according to the last phrase of subsection 801.11(e)(1)(ii) the Company A or B shareholder acquiring voting securities in Newco may exclude the voting securities the shareholder owns in Company A or B from the total assets of the shareholder's size-of-person. At the time the shareholder receives Newco Common Stock, Companies A and B are entities within the acquired person Newco and, according to the last phrase of subsection 801.11(e)(1)(ii), the Company A and/or B voting

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securities are not included within the total assets of the shareholder for purposes of determining the size of the shareholder person.

Therefore, pursuant to Rule § 801.11(e)(1)(ii), a shareholder of Company A and/or B who receives Newco Common Stock pursuant to the Transaction would exclude the Company A or B voting securities owned by the shareholder acquiring person from the calculation of the size of the shareholder acquiring person in his acquisition or receipt of Newco Common Stock.

You also confirmed that even if the Company A or B voting securities are required to be included in the total assets of the acquiring shareholder person, the value of the securities may be based upon the person's cost basis of the securities or any other appropriate valuation method, and does not need to be based on current market value of the securities.

Again, thank you for your assistance in understanding the applicability and scope of Rule § 801.11(e)(1)(i)-(ii) as it relates to the fact scenario we discussed and as described in this letter.

If you have questions or if this letter does not accurately summarize our discussions and conclusions, please call me at your earliest convenience.

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FOR THE FIRM

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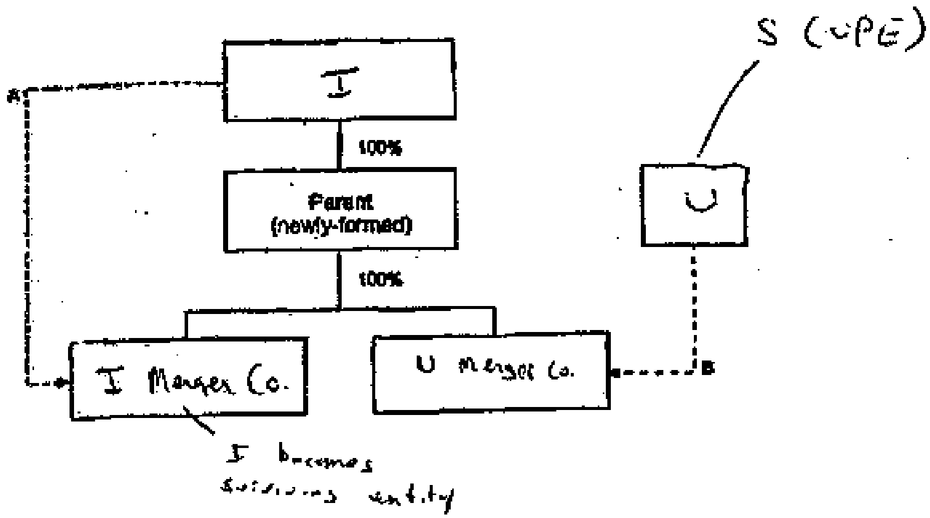

In consideration of U merging with and into U Merger Co. (with U being the surviving entity), S will be issued @ 85% of the stock in Parent, resulting in S being the UPE of U and I.

I & S FILE AS [illegible] A [illegible] & ACQUIRING IN THE CONSOLIDATION OF I & U. S'S ACQUISITION OF A CONTROLLING INTEREST IN PARENT CAN BE SUBSUMED W/ ITS FILING AS UPE OF U IN THE [illegible] [illegible] & N. [illegible] AGREE.

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