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VEDDER PRICE

[redacted]

May 18, 2000

Via Facsimile and First-Class Mail

B. Michael Verne, Esq.
Federal Trade Commission
Premerger Notification Office
Bureau of Competition, Room 303
6th Street and Pennsylvania Avenue, N.W.
Washington, DC 20508

Re: Ultimate Parent Entity of Filing Person

Dear Mr. Verne:

This letter summarizes our conversation on or about April 26, 2000, concerning whether a shareholder of a closely-held Delaware corporation, under the circumstance described below, would be deemed the ultimate parent entity of that corporation within the terms of Section 801.1(a)(3) of the FTC Premerger Notification Rules ("FTC Rules"). I advised you at that time that I previously discussed this matter with Alice Villavicencio of the Staff of the FTC Premerger Notification Office in October 1999, and that her conclusions were the same as those described below.

The company in question ("Company"), is organized under the Delaware General Corporation Law ("Delaware GCL") and has issued and outstanding both Common Stock and Series A Convertible Preferred Stock. One shareholder of Company ("Shareholder"), owns all of the issued and outstanding Convertible Preferred Stock of Company ("Shares"), and does not own any Common Stock. The Certificate of Designations, Rights, Preferences and Limitations for the Shares ("Certificate of Designation"), which is filed with the Delaware Secretary of State pursuant to Section 151 of the Delaware GCL, provides (i) that each of the Shares entitles the holder thereof to vote on all matters submitted to a vote of the stockholders of Company, and to have the number of votes equal to the number of shares of Common Stock into which each Share then is convertible, and (ii) that the Shares and the Company's Common Stock shall vote together as a single class. The Company's Bylaws provide for noncumulative voting for the election of directors.

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The Certificate of Designation further provides that, notwithstanding the provisions described above, (i) no holder of Shares shall be entitled to total voting power, in any matter submitted to a vote of Company's shareholders, in excess of 45 percent of all votes entitled to vote on that matter, and (ii) no holder of Shares shall be entitled to convert said Shares to Common Stock of Company in excess of that number of shares that will entitled the holder to total voting power of 45 percent of all votes in any matter submitted to a vote of the stockholders of Company.

Company and Shareholder also are parties to a Common Stock Subscription and Purchase Agreement ("Subscription Agreement"), which sets the number of directors of Company at five, and gives Shareholder the right to nominate two directors so long as Shareholder holds 15 percent of Company's equity. There are no other shareholder agreements between Company, Shareholder, or other shareholders of Company, by virtue of which Shareholder has any contractual power presently to designate 50 percent or more of the directors of Company. Additionally, by virtue of the fact that Company's Bylaws provide for noncumulative voting for directors, Shareholder does not have the right to elect or cause to be elected 50 percent or more of the directors of Company.

During our discussion of this matter, you concluded that, due to the restrictions in the Certificate of Designation limiting to 45 percent Shareholder's entitlement to vote on the election of directors of Company, and applying the numerical test for calculating the percentage of voting securities of an issuer as set forth in Section 801.12(b) of the FTC Rules, the Shareholder would not be deemed to hold 50 percent or more of the outstanding voting securities of Company within the terms of Section 801.1(b)(1) of the FTC Rules and, accordingly, would not be deemed the Ultimate Parent Entity of Company within the terms of Section 801.1(a)(3) of the FTC Rules.

You also concluded that Shareholder would not be deemed to have the contractual power presently to designate 50 percent or more of the directors of Company, within the terms of Section 801.1(b)(2) of the FTC Rules, by virtue of the fact that the Subscription Agreement between Company and Shareholder sets the number of directors of Company at five, and gives Shareholder the right to nominate only two of Company's directors.

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Please call me at your convenience to confirm the conclusions described above. Your attention to this matter is greatly appreciated.

Very truly yo[redacted]

GGW/jab

AGREE - THE NUMBER OF PREFERRED SHARES HELD BY SHAREHOLDER IN RELATION TO THE TOTAL OUTSTANDING SHARES IS IRRELEVANT. THE SHARES HELD CANNOT CAST MORE THAN 45% OF THE VOTES FOR ELECTION OF DIRECTORS. NOTE THAT THE RESULT WOULD NOT BE THE SAME IF THE 45% CAP WAS DUE TO A SHAREHOLDER AGREEMENT INSTEAD OF THE CERTIFICATE OF DESIGNATION.

B Michael Verne
5/19/00

N. OWKA & T. HANCOCK AGREE.

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