[redacted]

ATTORNEYS AT LAW

[redacted]

[redacted]

December 14, 2001

Via Telecopy – 202-326-2624

Ms. Nancy Ovuka
Federal Trade Commission
Premerger Notification Office
601 Pennsylvania Avenue
Washington, DC 20580

RE: Interpretation of the HSR Act and Rules

Dear Nancy:

This letter summarizes our telephone conversations today.

Scenario
Our client A intends to acquire corporation B by acquiring approximately 47% of B stock from two shareholders, S and T, for approximately $32 million and moments later merging B into a subsidiary of A, exchanging the remaining outstanding stock for approximately $33 million. Consummation of the S and T share purchases and of the merger are both contingent upon HSR filing and expiration of the appropriate waiting period.

In addition to agreeing to sell their shares to A, S and T agree to the following limitations regarding their B stock prior to the merger:

1) S and T grant A an irrevocable proxy to vote their shares on the issues of whether to enter the merger, whether to accept any alternative takeover offer, and whether to take any other action that would undermine the consummation of the merger. The proxy is explicitly limited to these topics and does not include the right to vote on directors of B.

2) S and T agree not to dispose of their B shares prior to the merger.

The shareholder agreements do not affect S and T's rights to any dividends etc. arising from their B shares prior to the merger.

[redacted]

To increase the likelihood that sufficient of B's shareholders will vote in favor of the merger, A wishes to acquire approximately 20% of B voting stock from two other B shareholders, U and V in advance of the vote on the merger, for an acquisition price below $50 million. By combining the proxy votes for the S and T shares with the U and V shares that he would own outright, A would be able to vote approximately 2/3 of the outstanding votes regarding issues relating to the merger. Because the proxies are limited to issues relating to the merger, however, A would have only approximately 20% of the votes for directors of B.

Interpretation

I asked whether A would need to file for the acquisition of the U and V shares in advance of the merger. You informed me that the FTC staff has taken the position that, if a purchaser will acquire more than $50 million of voting securities and therefore needs to report the transaction, then the purchaser may acquire only up to the lesser of 50% or $50 million of such voting securities prior to filing and expiration of the waiting period for the total transaction. Acquisition of 50% or more of the voting securities, even if valued at less than $50 million, would constitute gun jumping because it would transfer control of the company before expiration of the waiting period.

Applying this general interpretation to the scenario above, you noted that A would hold more than 50% of the voting securities if the share purchase agreements with S and T either conferred the right to vote those shares for directors or transferred beneficial ownership of their shares immediately. The proxies, however, do not confer the right to vote for directors, and only one other indicium of beneficial ownership will have transferred, namely the right to control disposition of the stock. You, therefore, agreed that A will not be deemed to hold S and T's voting securities if he acquires the shares from U and V and, consequently, the acquisition of the U and V share will not be jumping the gun. Based on the facts outlined above, you agreed that A need not report the acquisition of the U and V shares so long as they do not exceed either 50% of the voting securities or $50 million.

I would appreciate hearing from you as soon as possible if I have misunderstood your view of this scenario. Thank you for your help.

Sincerely yours,

[redacted]

12/17

Agree w/ interpretation

M/V concurs