802.63

[redacted]

ATTORNEYS AT LAW

[redacted]

[redacted]

June 4, 2002

BY OVERNIGHT COURIER

Mr. Michael B. Verne
Premerger Notification Office
Federal Trade Commission
6th & Pennsylvania Avenues, N.W.

Re: Conversion of Debt Acquired in a Bona Fide Credit Transaction into Stock through Bankruptcy Reorganization

Dear Mr. Verne:

I am writing this letter to confirm oral advice you provided to the undersigned in a telephone conversation on June 3, 2002 regarding the applicability to the following transaction of the notification requirements under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (the "Act") and the Federal Trade Commission's implementing regulations (the "Rules").

Our client, a broker-dealer (the "Broker-Dealer"), purchased for its own account public unsecured bonds issued by Company X both before and after Company X filed for bankruptcy protection in May 2000. Prior to the bankruptcy filing, the Broker-Dealer acquired Company X debt (the "Pre-filing Debt"). After the bankruptcy filing (during June 2000 through September 2000), the Broker-Dealer acquired additional Company X debt (the "Post-filing Debt").

Company X recently filed a reorganization plan, pursuant to which all unsecured claims of Company X will be exchanged for new reorganized equity of Company X. As result of its holdings of Company X debt, the Broker-Dealer will receive between 25-30% of Company X's common stock. Based on the estimated value which the Company placed on the new stock as part of the reorganization, which value is stated in Company X's reorganization disclosure statement, the value of the stock that the Broker-Dealer will hold as a result of the reorganization (including stock to be issued on account of both the Pre-filing Debt and Post-filing Debt) will be between $75-85 million. However, the value of stock to be issued to the Broker-Dealer on account of the Post-Filing Debt only is less than $50 million.

At the time of the Broker-Dealer's purchase of both the Pre-filing Debt and the Post-filing Debt, the Broker-Dealer's intent was to purchase debt of Company X at a steep discount with the expectation that it would be later able to sell the debt for more than the discounted price it paid. The Broker-Dealer's intent when acquiring the debt was not to acquire equity in Company X. Moreover, the Broker-Dealer regularly purchases public debt issued by companies, including companies in financial difficulty.

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In our conversation yesterday, you advised that, under the circumstances described above, the FTC staff would consider the acquisition of the Pre-filing Debt would be considered to be a bona fide credit transaction in the ordinary course of the creditor's business. As a result, the exchange of the Pre-filing Debt for Company X stock through the bankruptcy reorganization would be exempt from the reporting requirements of the Act under Section 802.63 of the Rules.

You advised, however, that the FTC staff would not consider the acquisition of the Post-filing Debt would be considered to be a bona fide credit transaction in the ordinary course of the creditor's business, regardless of whether the Broker-Dealer intended to acquire only debt obligations and regardless of whether the Broker-Dealer regularly purchases debt of insolvent companies after the filing of a bankruptcy petition. As a result, no exemption is available for the exchange of the Post-filing Debt for Company X stock.

You further advised that in determining whether the size of the transaction test is met under the Act, the Broker-Dealer may consider only the value of the stock issued in exchange for the Post-filing Debt (i.e., exclude the value of the exempt exchange involving the Pre-filing Debt). As a result, under the circumstances outlined above, the bankruptcy reorganization plan of Company X will not meet the size of the transaction threshold and the Broker-Dealer is not required to file the notification required by the Act.

Please contact me as soon as possible if the analysis set forth herein does not accurately reflect the informal advice you provided in our telephone conversation. I understand that you will write your comments on this letter and that it will subsequently be publicly available through requests under the Freedom of Information Act. Thank you for your assistance with this matter.

Very truly yours,

[redacted]

AGREE.
Bruchelow
6/5/02