[redacted]

July 29, 2002

Via Facsimile (202) 326-2624

Ms. Alice Villavicenzio
Compliance Specialist
Federal Trade Commission
Pre-Merger Office, Room 303
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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FEDERAL TRADE COMMISSION PREMERGER NOTIFICATION OFFICE

Dear Ms. Villavicenzio:

I am writing to follow-up on our earlier telephone conversation. Our client (Company A) is considering buying 100% of the stock of another company (Company B). These two companies have agreed upon an acquisition price of roughly $24,000,000.00. Company B currently has outstanding debt that we can assume, for our purposes, is in excess of $26,000,000.00. Company A is not going to "assume" the debt, but will own 100% of Company B's stock after the sale is complete. The debt will remain in Company B's name. The question we have is whether the transaction, as I have described it, is one that would require pre-merger notification and approval from the FTC and/or DOJ? NO

15 USC 18(a), as amended, provides a threshold transaction amount of more than $50,000,000.00. Pursuant to that statute, a transaction would trigger pre-merger notification obligations if therein, the acquiring person would obtain voting securities (or assets) of the acquired person in excess of $50,000,000.00 but less than $200,000,000.00. If the transaction price falls within this ambit, additional "size of the person" tests will be required to further determine whether pre-merger notification is necessary. The "size of the person" tests do not even come into play unless the value of the voting securities (or assets) transaction exceeds $50,000,000.00. Correct

To value the transaction at the outset, one is guided by 16 CFR § 801.10, which provides that voting securities not traded on a national exchange are valued by the acquisition price if it has been

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determined. 15 CFR § 801.10(a)(2)(i) In this case, Company B's stock is not traded on a national securities exchange and the acquisition price has indeed been determined. Therefore, the value of the voting securities in this transaction is $24,000,000.00.

This being the case, it can be presumed that no pre-merger notification is necessary in this instance as the acquisition price in this stock sale is less than the $50,000,000.00 threshold amount. The existence of outstanding debt held on the books of Company B has presumably been taken into account when the parties negotiated and arrived at a sales price of $24,000,000.00. As you indicated, it should not be added again to the acquisition price as additional consideration. To do so would serve to inflate the value of the voting shares to be purchased, and would additionally (and artificially) push the acquisition price over the $50,000,000.00 threshold.

Would your opinion differ if Company A were asked to assist in the release of Company B's shareholders from the debt after the sale, and become an obligated guarantor in their place? No, as long as this were the components of in determining purchase price.

Please call me at your earliest convenience to confirm the conclusion we reached earlier on the telephone that, based on the above outlined facts, the proposed transaction at issue does not require the parties to file a pre-merger notification. Also, please let me know if the variation suggested changes your ultimate conclusion, and if so, why?

Thank you for your assistance and I look forward to speaking to you soon.

Sincerely yours,

[redacted]

cc: [redacted]

Since the purchase price has been determined and the debt or other obligations were considered when determining the purchase price, no additional "consideration" to the acquisition purchase is needed. No HSR filing is required.

Called writer on 8/6/02 - AV and 8/8/02 -

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