801.40
7A(c)(10)

[redacted]

FACSIMILE [redacted]

DIRECT DIAL NUMBER
[redacted]

E-MAIL ADDRESS
[redacted]

PRIVILEGED AND CONFIDENTIAL

VIA E-MAIL

August 21, 2003

Re: Hart-Scott-Rodino Act Requirements

Michael B. Verne
Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Room 301
Washington, D.C. 20580

Dear Mr. Verne:

This letter is meant to confirm the telephone discussion we had on August 13, 2003 relating to the filing requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and the rules promulgated thereunder (the "HSR Rules") in connection with the formation of a new acquisition corporation that will acquire approximately 95% of the voting securities of another corporation, which, in turn, will be merged with the acquisition corporation.

As I described in our telephone conversation, certain investment funds (the "Investors") will contribute cash to a newly-formed acquisition corporation ("Newco") in exchange for shares of common stock of the Newco (the "Formation"). The Newco will be its own ultimate parent entity because no Investor will hold 50% or more of the voting securities of Newco nor will any Investor have the contractual power to designate 50% or more of the directors of Newco. Pursuant to an Agreement of Sale and Purchase (the "Agreement"), Newco will acquire 95% of the common stock of the target corporation (the "Company") from its parent corporation ("Parent") for in excess of $1 billion (the "Acquisition"). Parent will retain the remaining 5% of the voting securities of the Company as well as certain nonvoting preferred securities. Immediately following the Acquisition, Newco will be merged with and into the Company (the "Merger") and the Company will continue as the surviving corporation. As a result of the Merger, each Investor will acquire

voting securities of the Company on a pro rata basis with respect to the voting securities it held in Newco.

Based on our discussion, it is my understanding that the Investors will not be required to make HSR filings for their respective acquisitions of voting securities of Newco in connection with the formation of Newco, nor will they be required to make HSR filings for their respective acquisitions of voting securities of the Company in connection with the Merger, so long as Newco makes an HSR filing in connection with the Acquisition and pays a filing fee of $280,000.

According to §801.40(b) and (c) of the HSR Rules, each person acquiring voting securities in the formation of a corporation will be subject to the HSR filing requirements unless (1) exempted by the HSR Act, (2) the commerce test, the size-of-person threshold or the size-of-transaction threshold are not met; or (3) the acquisition is made in connection with a merger or consolidation. Despite the fact that the Merger occurs after Newco's acquisition of the voting securities of the Company, you advised me that the Investors would not be required to make filings pursuant to §801.40(b) and (c) so long as an HSR filing is made for the Acquisition by Newco because the Formation will occur in connection with a merger.

Furthermore, you advised me that the Investors will not be required to make HSR filings for their subsequent acquisitions of voting securities of the Company in connection with the Merger pursuant to Section 7A(c)(10) of the HSR Act. Section 7A(c)(10) of the HSR Act exempts "acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of the outstanding voting securities of the issuer." Since each of the Investors will convert their voting securities of Newco into voting securities of the Company, they will technically acquire voting securities of a "different issuer." However, according to our conversation, each of the Investors will be deemed to be acquiring voting securities of the "same issuer" under the HSR Act because they will merely convert the voting securities they hold of Newco into voting securities of its wholly-owned subsidiary on a pro rata basis. Consequently, each of the Investors will be exempt from making an HSR filing under Section 7A(c)(10) of the HSR Act because they will not increase their respective percentage of voting securities of the issuer held as a result of the Merger.

[redacted]

I would appreciate it if you would confirm our conclusion that the facts and circumstances described above (1) do not require HSR filings by the Investors for their respective acquisitions of Newco and the Company and (2) require only Newco and the Company make an HSR filing for the Acquisition. If you have any questions, please do not hesitate to contact me at [redacted]

Thank you,

[redacted]

AGREE –
B. Michaelson
9/25/03