801.10
801.90

[redacted]

March 1, 2004

VIA: FACSIMILE

Michael B. Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission - Room 303
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mike:

This letter is confirming our telephone conversation on Friday, February 27, 2004, regarding the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act" or the "Act"), and the rules promulgated thereunder, 16 C.F.R § 801.10 et seq. (the "Rules"), relating to an acquisition of voting securities and subsequent redemption of stock.

As discussed, Company A will acquire less than $50 million in voting securities of Company B. There are two possible scenarios for this acquisition. In scenario 1, A would control B through its acquisition of the voting securities, while in scenario 2, A would not control B through this acquisition. In either scenario, immediately after A's acquisition of voting securities in B (in a virtually simultaneous closing), B will redeem voting securities of B owned by C for less than $50 million (using the cash from A and loan proceeds from a third-party lender to pay C). Upon the redemption, A will control B.

Assume for purposes of this analysis that the parties meet the size-of-person thresholds and that the structure of the transaction has a legitimate business purpose. As we discussed, because the value of A's acquisition of B stock would be below the $50 million size-of-transaction threshold, A would not have a filing under the Act for this acquisition. Further, no filing would be required for the redemption transaction, regardless of whether A controls B at the time of the redemption, because the § 802.30 intraperson exemption would apply.

The question I posed to you was whether the value of A's acquisition of voting securities and the value of B's subsequent redemption would have to be aggregated. As

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we discussed, so long as there is a legitimate business purpose for the structure of the transaction, the PNO would not view it as a transaction or device for avoidance under § 801.90. Accordingly, the values of the transactions would not be aggregated for purposes of the size-of-transaction test. You agreed that informal interpretation No. 190 does not change this analysis. Therefore, the values of A's purchase of voting securities of B and B's redemption of voting securities from C would not be aggregated, and no filing would be required.

Please let me know if I have misunderstood any part of our conversation. Thank you for your attention to this matter.

Sincerely,

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[redacted]

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AGREE THAT IF THERE IS A LEGITIMATE BUSINESS REASON FOR THIS STRUCTURE, 801.90 WOULD NOT BE INVOKED.

B Verne
3/2/04