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December 21, 2005

VIA FACSIMILE NO. (202) 326-2624

Mr. Michael B. Verne
Federal Trade Commission
Pre-Merger Notification Office
Bureau of Competition, Room 303
600 Pennsylvania Ave., NW
Washington, DC 20580

Re: ***Size-of-Person Test Analysis***

Dear Mike:

This will follow up our telephone conversations yesterday and last week. I described to you the following set of hypothetical facts:

Mr. Z is the owner of 100% of three LLCs ("A", "B" and "C"). He has no regularly prepared balance sheets. If he prepared one today for purposes of the transaction, his investment assts would consist principally of the assets of the entities he controls. Mr. Z funds the entities himself, rather than borrowing money or raising capital from outsiders.

LLC A has assets on its last regularly prepared balance sheet of $ 8 million, of which $ 2 million represents an account receivable from LLC B. The account receivable represents (a) loans from LLC A to LLC B, and (b) cost allocations of various expense items that are common to the three entities, which all operate out of the same premises and which share employees and certain assets.

LLC C has assets on its last regularly prepared balance sheet of $1 million, $500,000 of which represents an account receivable from LLC B, which is similar in nature to the account receivable described above.

LLC B has assets on its last regularly prepared balance sheet of $2 million. The balance sheet includes assets that LLC B purchased with funds from LLC A and LLC C. However, it would be difficult if not impossible to trace the exact dollars loaned by LLC A or LLC C to specific assets on LLC B's balance sheet.

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Mr. Z proposes to sell his interests in LLC B to an outside party. The aggregate book value of Mr. A's three controlled entities is $11 million, which exceeds the $10.7 million threshold. In preparing a balance sheet for purposes of the transaction, may Mr. Z under Rule 801.11(b) eliminate the LLC B receivables from the balance sheets of LLC A and LLC C, which would reduce the aggregate value of Mr. A's assets to less than $10.7 million?

We concluded that Mr. Z could disregard the accounts receivable on LLC A's and LLC B's balance sheets for two reasons. First, accounts receivable typically represent money due the reporting person from third parties. Here, by contrast, Mr. Z essentially owes himself the money.

Second, to the extent the loaned funds were used by LLC B to purchase assets, LLC B's assets and LLC A's and LLC C's accounts receivable would be duplicative.

We also addressed a second issue, relating to CDs held by Mr. Z. Between now and the date of closing, Mr. Z. intends to sell the CDs and use the cash to pay off certain debts of his LLCs. We agreed that, for purposes of the size of person test, the liquidation of the CDs prior to closing was analogous to the payment of an extraordinary dividend and could permissibly reduce Mr. Z's level of assets in a way that resulted in his failing the size of person test.

The analogous scenario, involving the payment of an extraordinary dividend, was addressed in Opinion Number 195 of the Premerger Notification Practice Manual (2003 edition). There the staff concluded that cash that would be distributed to shareholders as an extraordinary dividend before closing may be disregarded for purposes of the size-of-person test, even where the dividend is being created to fall below the size-of-person test. We agreed that the same analysis would apply to Mr. Z' s sale of the CDs.

Please get back to me if I've misunderstood the analysis or you have any further questions.

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N. Ovuka concurs

Agree - B. [illegible]
12/21/05

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