[redacted]

April 29, 1991

BY FAX

Richard Smith, Esquire
Federal Trade Commission
Premerger Notification Office
6th and Pennsylvania Avenues
Washington, DC 20580

Dear Mr. Smith:

I would like to discuss with you by telephone the parties' reporting obligations for the following transaction:

A. The Parties

1. Corporation X has less than 20 shareholders, none of which has "control" over X within the meaning of the rules.

2. Corporation Y has three shareholders with the following ownership percentages: A = 20%; B = 40%; C = 40%.

3. X and Y each satisfy the $100 million size-of-person test, as do some, but not all, shareholders of X and Y.

B. The Transaction

X and Y's shareholders enter into the following transaction:

1. C's shares in Y are redeemed for less than $15 million in cash.

2. Remaining shareholders of X and Y form a holding company, corporation HC.

3. Each shareholder of X exchanges all of its shares in X for voting securities of HC.

4. Simultaneously with step 3, shareholder A exchanges its shares in Y for voting securities of HC, and

shareholder B exchanges its shares in Y for non-voting securities in HC which, if not redeemed by HC, can be converted into voting shares of HC after 5½ years.

5. As a result of this exchange, no shareholder of HC will receive stock of HC valued at $15 million or more, and no person will have "control" over HC within the meaning of the rules. Collectively, the shareholders of X will receive almost twice as much of the stock of HC (on a fully diluted basis, counting voting and non-voting shares) as the shareholders of Y.

6. Shareholder A will receive a 5-year option to acquire 20% of HC's voting securities, and Shareholder B will receive an option, which expires in 1995, to acquire 100% of HC's voting securities for $75 million.

7. Following formation, HC will contribute its shares of Y to X, so that Y will become a wholly owned subsidiary of X. ?

8. A newly formed subsidiary of HC will acquire certain assets of shareholder A having a value of less than $15 million.

C. Analysis

An argument can be made that no H-S-R filing is required for any aspect of this transaction. In form, this looks like an 801.40 formation which qualifies for an 802.20 exemption as to each shareholder of HC. Nor is this a consolidation under 801.2(d)(2)(iii), since X and Y will not be losing their pre-acquisition identities. In substance, however, the acquisition is intended to be an acquisition, partly for stock, of Y by X, with the holding company structure being used to obtain favorable tax treatment. Accordingly, we believe it is appropriate to treat this transaction as an acquisition by X (an entity included within HC) of the voting securities of Y, with shareholders A and B receiving as consideration voting and non-voting securities of HC. A's acquisition of HC's shares would not be separately reportable under 802.20, and B's acquisition of HC shares would be exempt under 802.31. Redemption of C's shares in Y would not be reportable under 802.30. HC's contribution of its shares in Y to X would also be exempt under 802.30, and the acquisition of certain assets from shareholders A by HC will not be reportable because it does not satisfy the size-of-transaction test of 15 U.S.C. 18A(a)(3). The options received by shareholders A and B to acquire HC voting shares are not presently reportable, but may be reportable if and when exercised.

Accordingly, we would propose reporting this transaction as a single acquisition of voting securities of Y with HC, including X, as the acquiring person and Y as the

(now entitled by B?

acquired person. Please call me when you have reviewed this to discuss any questions you might have.

Sincerely,

[redacted]

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4/29/91 - discussed with A.D. John Sipple. He says that HC, including X, filing to acquire Y [redacted] to determine if Y is then controlled by B) would be okay. So advised [redacted] (A, B + C shareholders are not husband and wife or minor children.)

RBSmith