

801.11

[REDACTED]

[REDACTED]

[REDACTED]

This material may be subject to the confidentiality provisions of Section 7A (h) of the Clayton Act which restricts release under the Freedom of Information Act.

August 15, 1991

Re: Transaction No. [REDACTED]

Hy Rubenstein, Esq.  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Room 303  
6th Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

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FEDERAL TRADE COMMISSION  
BUREAU OF COMPETITION  
PREMERGER NOTIFICATION OFFICE

Dear Mr. Rubenstein:

As we discussed yesterday morning, I am writing you regarding the application of the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act (as amended, the "Act") and the regulations promulgated thereunder with respect to the above referenced transaction. Our client, [REDACTED] a [REDACTED] limited partnership (collectively, with the entities which it controls within the meaning of the Act, [REDACTED] and an acquiring person (within the meaning of the Act), and [REDACTED] a [REDACTED] corporation [REDACTED] and an acquired person (within the meaning of the Act), each filed Notification and Report Forms on [REDACTED] with respect to the proposed acquisition (the "Acquisition") from [REDACTED] wholly owned subsidiary, [REDACTED] a Delaware corporation, of all of the outstanding voting securities of [REDACTED] a Delaware corporation.

For the purpose of applying the test set forth in 15 U.S.C. § 18a(a)(2) (often referred to as the "size-of-the-parties test"), you have advised us that it is the staff's view that pursuant to 16 C.F.R. § 801.11(c)(2), the total assets of a person shall be as stated on such person's last regularly prepared balance sheet. As reflected in [REDACTED] Notification and Report Form filed on [REDACTED] the last regularly prepared balance sheet of [REDACTED] (prepared as of [REDACTED] states that [REDACTED] total assets have a book value less than \$10 million. [REDACTED] has advised us that it currently anticipates that the book value of its total assets as reflected on its most

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recent regularly prepared balance sheet prior to the closing of the Acquisition (the "Closing") will be less than \$10 million. However, [REDACTED] has advised us that it does anticipate that at Closing it will have in excess of \$10 million in total assets, primarily by virtue of its raising capital for purposes of effecting the Acquisition. Additionally, [REDACTED] has advised us that it currently does not have, and does not anticipate that it will have at any time prior to Closing, annual sales in excess of \$10 million.

Despite the fact that [REDACTED] will have in excess of \$10 million in total assets at Closing, you have advised us that it is the view of the staff of the Federal Trade Commission (the "Commission") that the manner of determining the total assets of a person set forth in 16 C.F.R. § 801.11(c)(2) controls, and that if [REDACTED] does not have a regularly prepared balance sheet prior to Closing reflecting that it has \$10 million or more in total assets, [REDACTED] and [REDACTED] have not met the size-of-the-parties test under the Act and, therefore, are not required to file Notification and Report Forms under the Act. Further, you have advised us that the staff of the Commission would not take the position with respect to the Acquisition that even though [REDACTED] currently anticipates having over \$10 million or more in assets at Closing and its last regularly prepared balance sheet immediately prior to Closing is expected to show that [REDACTED] has less than \$10 million in total assets, the determination of [REDACTED] filing obligations under the Act is not a transaction or device for avoidance as described in 16 C.F.R. § 801.90 if [REDACTED] makes such a determination based upon its last regularly prepared balance sheet as of Closing in accordance with 16 C.F.R. § 801.11(c)(2).

Finally, you have advised us that the Commission intends to return the \$20,000 filing fee which [REDACTED] submitted to the Commission with [REDACTED] Notification and Report Form on [REDACTED]. Please make the return check for such filing fee payable to [REDACTED].

It is our understanding that you will be providing to us a confirmatory letter with respect to the foregoing matters.

Thank you for your assistance in this matter. If you have any further questions regarding the foregoing, please call me at the number noted above.

Very truly yours,  
[REDACTED]

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cc: Antitrust Division, Department of Justice

