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March 30, 1992

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE
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BY HAND

John M. Sipple, Jr., Esquire
Assistant Director for Premerger Notification
Bureau of Competition
Federal Trade Commission
Sixth Street & Pennsylvania Avenue, N.W.
Room 306
Washington, D.C. 20580

Dear John:

I am writing to confirm the substance of our telephone conversation on March 26, 1992, in which you advised that no premerger notification would be required under the circumstances described below. We understand that the advice you gave us applies only to the facts set forth in this letter.

Corporation A holds approximately 48% of the outstanding common shares of a Delaware corporation ("the Issuer"). Corporation A's sole investment is this interest in the Issuer, but its ultimate parent entity is an individual with investments in several enterprises. Neither Corporation A nor its ultimate parent entity regularly lends money.

An individual, X, owns 20% of the common shares of the Issuer. X does not control or have any interest in Corporation A. Under a shareholder agreement, X is entitled to name himself and one other individual as two of the four directors of the Issuer (and has done so), and Corporation A is entitled to name the other two directors (and has done so).

Corporation A made a substantial loan to X, which was secured by X's shares of the Issuer ("the Pledged Shares"). Neither Corporation A nor its ultimate parent entity controls a competitor of X or of the Issuer. The loan and the pledge agreement were negotiated at arm's length. At the time of the

loan, X delivered the stock certificates for the Pledged Shares to Corporation A, together with a blank stock power, signed by X.

The pledge agreement provides that upon default by X, cash dividends, if any, would be paid to Corporation A and applied to reduce X's debt to Corporation A. X can cure a default at any time before foreclosure by paying the full amount it owes to Corporation A, and in such event dividend rights would revert to X, and Corporation A would have to return the stock certificates and the blank stock power to X.

The pledge agreement also prohibits X from disposing of the Pledged Shares. Corporation A may not dispose of the shares except by following one of the procedures set forth in Article 9 of the Uniform Commercial Code ("U.C.C."), as described in paragraphs 4 and 5 below.

X has defaulted on the loan from Corporation A. Corporation A therefore has a number of options under the pledge agreement, and under U.C.C. Article 9.

1. On the basis of a power of attorney included in the pledge agreement that authorizes Corporation A to vote the Pledged Shares upon a default by X, Corporation A could immediately vote the Pledged Shares. You advised that under these circumstances, Corporation A would not be acquiring beneficial ownership of the Pledged Shares, and therefore premerger notification would not be required.

2. Corporation A could insert "Corporation A, as pledgee" as the transferee in the blank stock power it is holding, and submit it to the Secretary of the Issuer. The record ownership of the Pledged Shares would then be transferred to "Corporation A, as pledgee." As a matter of Delaware law, this alone would not authorize Corporation A to vote the Pledged Shares; Corporation A would, however, then be entitled to vote those shares based upon the pledge agreement. You advised that under these circumstances, Corporation A would not be acquiring beneficial ownership of the Pledged Shares, and therefore premerger notification would not be required.

3. Corporation A could insert "Corporation A" as the transferee in the blank stock power, and submit it to the Secretary of the Issuer. The record ownership of the Pledged Shares would then be transferred to "Corporation A", and as a matter of Delaware law, Corporation A as the record holder would be entitled to vote the shares. You advised that under these circumstances, Corporation A would not be acquiring beneficial

ownership of the Pledged Shares, and therefore premerger notification would not be required.

4. Under U.C.C. § 9-504, Corporation A could sell the Pledged Shares at either a public or a private sale. Given that the Issuer is a closely held company, Corporation A would not be able to bid at a private sale. At a public sale, Corporation A probably would bid, and most likely would be the highest, if not the only, bidder. If Corporation A were the highest bidder, it would acquire all rights, title and interest in the Pledged Shares, and record ownership of those shares would be transferred to "Corporation A" (if this had not already occurred in the manner described in paragraph 3 above). It is our view that an acquisition by Corporation A of the Pledged Shares at a public sale would be an "acquisition in foreclosure" under § 802.63(a) of the Premerger Notification Rules, 16 C.F.R. § 802.63(a). You advised that under these circumstances, Corporation A's acquisition of the Pledged Shares would be exempt from the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, pursuant to § 802.63(a) of the Premerger Notification Rules, 16 C.F.R. § 802.63(a), as "an acquisition in foreclosure, or upon default, . . . by a creditor in a bona fide credit transaction entered into in the ordinary course of the creditor's business." If, however, a person other than Corporation A acquired the Pledged Shares at the public sale, that acquisition would not be exempt under § 802.63(a).

5. Under U.C.C. § 9-505, Corporation A could give notice to X that it proposed to retain the Pledged Shares in satisfaction of X's debt. If X objected within 21 days after receiving such notice, Corporation A would have to proceed under U.C.C. § 9-504. If, however, X did not object within 21 days, Corporation A could retain the Pledged Shares in satisfaction of X's debt, record ownership of the Pledged Shares would be transferred to "Corporation A" (if this had not already occurred), and Corporation A would have all rights, title and interest in those shares. You advised that under these circumstances, Corporation A's acquisition of the Pledged Shares would be exempt from the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, pursuant to § 802.63(a) of the Premerger Notification Rules, 16 C.F.R. § 802.63(a), as "an acquisition in foreclosure, or upon default, . . . by a creditor in a bona fide credit transaction entered into in the ordinary course of the creditor's business."

We thank you, [redacted] for your very kind and patient attention to this matter. In accordance with your

Office's standard practice, unless we hear otherwise within three business days, we and our clients will proceed on the understanding that I have correctly memorialized your advice.

Best regards.

Sincerely,

Called on 3/31 to confirm that the letter reflects the advice provided.

In an early conversation, I explained that § 802.63 was applicable even though A did not regularly lend money since the loan was extended in an arms length bona fide credit transaction to a person who was represented not to be a competitor of A or its ultimate parent entity. However, the advice was clearly limited to these facts because the interpretation of 802.63 to creditors other than banks and similar financial institutions was under consideration by the Premerger Office.