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FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE
MAY 26 11 14 AM '92

May 21, 1992

Ms. Nancy Ovuka
Federal Trade Commission
Premerger Notification Office, Bureau of Competition
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

*via telecopy
original to follow
by regular mail*

Dear Ms. Ovuka:

I am writing to you to follow up on your telephone call to me on May 14, 1992, in response to my letter of May 13, describing a proposed merger transaction. To restate and simplify the transaction (which is described in more detail in my original letter), corporate ultimate parent entity "A", which owns subsidiary "X", and individual ultimate parent entity "B", which, through an intermediate corporation, owns corporation "Y", will merge X and Y, with X as the surviving corporation. As a result of the merger, A and B will receive, directly or indirectly, the following securities of the surviving corporation:

Issued to:	Class of Stock	Voting	No. of Shares	Voting %	Total Value
B	Class A Common	Yes	[REDACTED]	[REDACTED]	[REDACTED]
A	Class B Common	Yes	[REDACTED]	[REDACTED]	[REDACTED]
A	Class C Common	No*	[REDACTED]	[REDACTED]	[REDACTED]
A	Preferred	No*	[REDACTED]	[REDACTED]	[REDACTED]

*Except as required by law, or as to Preferred Stock, in Event of Default.

In our discussion, you disagreed with my analysis that the acquisition by B of securities of the surviving corporation would be exempt under Rule §802.20(b), because B would acquire

[REDACTED]

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It is solely the Stockholders Agreement that contains the agreement between the holders of the Class A Common Stock and the holders of the Class B Common Stock as to the composition of the Board of Directors over a period of time. It is also this Stockholders Agreement that contains provisions that give X the right and option to purchase or redeem the Class B Common Stock and the Class C Common Stock over a period of time. These are strictly contractual rights and there are no provisions in the Articles of Incorporation or Bylaws that relate to these rights other than the provision in the Articles that limits the issuance of additional Class A Common Stock. These provisions in the Stockholders Agreement refer to holders of the Class A Common Stock and holders of the Class B Common Stock rather than indentifying such parties by name and giving them individual rights relating to the Stock. From a corporate law standpoint, it is important that rights relating to the stock (including contractual rights) rest with the holders of the Stock and not with some named party. However, these references in the Shareholders Agreement are not intended to create rights intrinsic to the stock itself, but merely to define the relationship between the parties in connection with their ownership of stock in the same corporation.

Because of these circumstances, it would seem that the correct result under the language of the regulations and prior interpretations by the FTC staff (see interpretations #241 and #242 in the Premerger Notification Practice Manual, 1991 edition) would be to find that the exemption under Rule §802.20 is available for the transaction with respect to the acquisition by B of such voting securities.

If, after further consideration of the matter, you are not in agreement with the position stated above, please contact me at your earliest convenience. If I do not hear from you to the contrary within ten days of the date of this letter, I will assume that the FTC staff is in agreement with the analysis stated above.

Very truly yours,
[REDACTED]

[REDACTED]

[REDACTED]