801.1(c)

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WRITER'S DIRECT DIAL NUMBER

[redacted]

August 25, 1992

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FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE

BY HAND

Mr. Patrick Sharpe
Premerger Office
Federal Trade Commission
6th St. and Pennsylvania Ave.
Washington, D.C. 20580

Dear Mr. Sharpe:

This confirms our telephone conversations in which you advised that the following factual pattern does not give rise to a filing requirement under the Hart-Scott-Rodino Improvements Act of 1976 (the "HSR Act").

1. Investment Advisor/Manager is general partner of each of Partnership I, Partnership II and Partnership III and is the investment advisor and manager to each of these partnerships. Investment Advisor/Manager also advises and manages a portion of the assets of Fund X, which is a not-for-profit corporation that invests assets of various endowments.

2. Each of Partnership I, Partnership II and Partnership III are partnerships. Neither Investment Advisor/Manager nor any other entity has the right to 50 percent or more of the profits of Partnership I, Partnership II or Partnership III, or the right in the event of dissolution to 50 percent or more of the assets of Partnership I, Partnership II or Partnership III. In addition, neither Investment Advisor/Manager nor any other entity owns or has the right to obtain 50 percent or more of the outstanding voting securities of Fund X or the contractual power presently to designate 50 percent or more of the directors of Fund X.

3. Partnership I, Partnership II, Partnership III and Fund X (the "Purchasers"), Investment Advisor/Manager and Issuer entered into a Unit Purchase Agreement, (the "Agreement") pursuant to which the Purchasers acquired Units (the "Units") consisting of convertible preferred stock (the "Preferred Stock") and warrants to purchase common stock of Issuer on August 3, 1992.

[redacted]

4. Of the Units of Issuer acquired pursuant to the Agreement, Units valued at $4.5 million were acquired by Partnership III, Units valued at $4.5 million were acquired by Partnership II, Units valued at $1 million were acquired by Partnership I and Units valued at $10 million were acquired by Fund X. Investment Advisor/Manager did not acquire any Units under the Agreement. Except for these Units, neither Investment Advisor/Manager nor the Purchasers own or have the right to acquire any other voting securities of Issuer.

5. Partnership I, Partnership II, Partnership III and Fund X will have all rights to increase in value or dividends, and risk of loss of value, with respect to the respective shares of Preferred Stock owned by each. Investment Advisor/Manager has no right to any dividends or increase in value, or risk of loss of value, as to the Preferred Stock held by the Purchasers.

6. Pursuant to the partnership agreements and as the investment advisor and manager to each of the Purchasers and general partner to each of the partnerships, Investment Advisor/Manager has dispositive power and will have voting power in connection with the shares of Preferred Stock acquired by the Purchasers. Fund X may terminate its advisory and management relationship with Investment Advisor/Manager upon 90 days' notice. Pursuant to the partnership agreements, the limited partners of Partnership I, Partnership II and Partnership III may terminate at any time Investment Advisor/Manager, as general partner of those partnerships, upon a 66-2/3% vote of the limited partners, for cause as confirmed by a court of competent jurisdiction.

7. The terms of the Preferred Stock provide that the Preferred Stock will not have any voting rights whatsoever unless and until any holder of Preferred Stock (i.e., Partnership I, Partnership II, Partnership III or Fund X) notifies Issuer in writing that such holder elects to have voting rights. No holder of Preferred Stock has yet elected to have voting rights. Pursuant to the terms of the Preferred Stock, after the holders of Preferred Stock have elected to have such voting rights as described above, the holders of the Preferred Stock, voting as a separate class, have the right to elect one director of Issuer. That director is to be nominated by Investment Advisor/Manager, and may be removed at any time by the Purchasers by majority vote. The holders will also have voting rights equal to, and will be voted with, the Common Stock, except as otherwise required by law. The shares of Preferred Stock acquired by the Purchasers will represent approximately 20% of the outstanding voting stock of Issuer,

[redacted]

calculated in accordance with Rule 801.12 of the regulations under the HSR Act, upon the election by the Purchasers to have voting rights.

8. Separate from the acquisition of the Preferred Stock, the Agreement further provides that Issuer will use its best efforts to appoint one representative of the Purchasers to the Issuer board of directors. Pursuant to this provision, the Issuer Board of Directors has appointed a representative of Investment Advisor/Manager to the Board.

9. Neither Investment Advisor/Manager or any of the Purchasers has entered into any transaction or employed any other device for the purpose of avoiding an obligation to comply with the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 in connection with the acquisition.

The foregoing facts do not result in a reportable event because the size of transaction test is not satisfied.

Sincerely,

[redacted]

The Investment Advisor/Manager is the general partner of the three partnerships. Pursuant to the partnership agreements, the General partner has what appears to be certain indicia of beneficial ownership. However, the limited partners "may terminate at any time" the General partner. Thus the partnerships will hold the shares of issuer separately. Fund X and the partnerships will not meet the size-of transaction test.

Informed [redacted]
8-26-92

(JS)
RS concurs.