[redacted]

September 21, 1992

[redacted]

John M. Sipple, Jr., Esq.
Assistant Director for the Premerger
 Notification Office
Bureau of Competition
Room 301
Federal Trade Commission
Washington, D.C. 20580

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.

SEP 24 10 37 AM '92

FEDERAL TRADE COMMISSION PREMERGER NOTIFICATION OFFICE

Dear Mr. Sipple:

This letter shall confirm our telephone conversation on September 16, 1992, concerning the Federal Trade Commission's interpretation of 16 Code of Federal Regulations § 801.11(b) and (c) in connection with a determination of whether an acquiring person exceeds the annual net sales threshold under Title 15 U.S.C. Section 18a(a)(2)(B) (the "HSR Act") with respect to the facts set forth herein.

Corporation A's last regularly prepared annual statement of income and expense was its audited financial statement for the fiscal year ending January 31, 1992 prepared in accordance with accounting principles normally used by Corporation A (the "1-31-92 Financial Statement"). On July 1, 1991, Corporation A acquired a ninety percent (90%) general partnership interest in the profit and loss of Partnership B and became the managing general partner of Partnership B. The 1/31/92 Financial Statement consolidated the accounts of Corporation A and Partnership B. Under the principles of consolidation used in the 1/31/92 Financial Statement, the operations of Partnership B from and after July 1, 1991 were included in the consolidated annual net sales set forth in the 1/31/91 Financial Statement. Accordingly, the net sales of Partnership B included in the 1/31/92 Financial Statement do not include the net sales of Partnership B for the portion of the year prior to July 1, 1991 (<u>i.e.</u>, the date that Corporation A became a partner of Partnership B).

The issue presented is whether Corporation A can use the annual net sales amount set forth in the 1/31/92 Financial Statement as the combined annual net sales of Corporation A and Partnership B for purposes of § 801.11(b) and (c) in connection with a determination that Corporation A has not exceeded the annual net sales threshold for an acquiring person under Section 18a(a)(2)(B) of the Act. The issue is significant because if, for purposes of § 801.11(b), Corporation A is required to restate its consolidated annual net sales to include the net sales of Partnership B for a full twelve (12)-month period, Corporation A's annual net sales (when combined with annual net sales of other entities required to be included within such person) would exceed the $100 million annual net sales threshold set forth in § 18a(a)(2)(B).

Your response to the issue presented was that, so long as the 1/31/92 Financial Statement was not prepared for the purpose of avoidance of the requirements of the Act, the Federal Trade Commission would accept the principles used to consolidate the annual net sales of Partnership B as set forth in the 1/31/91 Financial Statement, as prepared, for purposes of the annual net sales threshold under § 18a(a)(2)(B) of the Act.

Very truly yours,

[redacted]

[redacted]

9/25 – Called and confirmed that this letter reflects the advice given, also confirmed that the financial statement of 1/31/92 is one of a series of such statements and that such statements are and have been prepared as of 1/31 in prior years.