801.11(e)

[redacted] This material may be subject to confidentiality [illegible] Section 7A (h) of [illegible] which restricts release under the Freedom of Information Act.

October 5, 1992

VIA TELECOPY/OVERNIGHT MAIL

Nancy Ovuka, Esq.
Mail Stop: Rm. 301
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Sixth Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

Dear Ms. Ovuka:

Thank you very much for taking the time to speak with me this afternoon about our proposed transaction. For ease of reference, attached are two exhibits which set forth the two alternative structures for our proposed transaction.

You should be aware that A is experiencing financial difficulties and is in default under its credit agreements. Unless it completes one of the proposed transactions in the near future, it will likely make a filing under Chapter 11.

Exhibit A sets forth the original structure of the proposed transaction. It was our conclusion that such structure would not require the filing of a Notification and Report Form pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"). Each of Newco and Acquisition Corp. would be newly-formed entities without annual net sales. The assets of each would consist solely of cash to be used in connection with the acquisition of securities. As a result, the parties would not satisfy the Size-of-the-Parties Test set forth in Section 7A(a)(2) of the HSR Act as determined in accordance with 16 C.F.R. §801.11(e).

Largely because of fraudulent conveyance issues and certain state law considerations, the parties have determined that the structure set forth in Exhibit A is inadvisable. The parties have determined that for such reasons the structure set forth in Exhibit B will better serve their purposes.

We have concluded that Step 1 of Transaction B will not require the filing of a Notification and Report Form for the same reason set forth above - Newco will not have any annual net sales nor will it have any assets other than the consideration to be paid in connection with the acquisition. Our problem is created by Step 2 of Transaction B. Under 16 C.F.R. §801.11(b)(1), after Newco acquires B its annual net sales and total assets must be recomputed to include the annual net sales and total assets of B. The parties in Step 2 (A and Newco) would then satisfy the Size-of-the-Parties Test which would require the filing of a Notification and Report Form.

As I noted to you in our conversation, each structure concludes with Newco owning A and the former majority stockholders of A owning B. All of steps in the transaction, regardless of the structure used, will occur essentially simultaneously on the same day.

It does not appear to us that there are any substantive antitrust issues applicable to the proposed transaction regardless of which structure is used, as each of A and B will be owned in the end by shell companies organized for their acquisition. Each shell company will be its own ultimate parent entity. The only reason that the structure set forth in Transaction B is favored by the parties is to protect them from fraudulent conveyance and various state law claims. It would not seem to serve any substantive purpose for a filing to be required merely because the structure has been changed to achieve the same result for reasons unrelated to the HSR Act or other antitrust laws.

I would appreciate it if you would review this transaction with your colleagues to determine whether a filing would, in fact, be required to be made.

I very much appreciate your attention to this matter and look forward to hearing from you.

Best regards.

Very truly yours,

[redacted]

Exhibit A

Parties:

A -	A corporation with consolidated annual net sales of approximately $250 million ($110 million not including B) and total assets of approximately $140 million ($85 million not including B). The owner of all outstanding shares of the capital stock of A. Its own ultimate parent entity.
B -	A subsidiary of A with consolidated annual net sales of approximately $140 million and total assets of approximately $55 million.
Acquisition Corp. -	A newly-formed entity owned by the majority stockholders of A. No assets (other than acquisition cash) or annual net sales. Its own ultimate parent entity.
Newco -	A newly-formed entity owned by unrelated third parties. No assets (other than acquisition cash) or annual net sales. Its own ultimate parent entity.

Steps:

1. Majority stockholders of A sell all of their shares of capital stock to Newco for cash.
2. Former majority stockholders of A contribute cash received from Newco to Acquisition Corp.
3. Acquisition Corp. purchases all of the capital stock of B from Newco for cash.

Result:

Newco owns A.
Former majority stockholders of A own B.

Exhibit B

Parties:

A - A corporation with consolidated annual net sales of approximately $250 million ($110 million not including B) and total assets of approximately $140 million ($85 million not including B). The owner of all outstanding shares of the capital stock of A. Its own ultimate parent entity.

B - A subsidiary of A with consolidated annual net sales of approximately $140 million and total assets of approximately $55 million.

Newco - A newly-formed entity owned by unrelated third parties. No assets (other than acquisition cash) or annual net sales. Its own ultimate parent entity.

Steps:

1. A sells all of the outstanding shares of the capital stock of B to Newco.

2. Newco sells all of the outstanding shares of the capital stock of B to the majority stockholders of A in exchange for all of their shares of capital stock of A.

Result:

Newco owns A.
Former majority stockholders of A own B.