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[Redacted]

[Redacted]

[Redacted]

December 2, 1992

DEC 2 4 1992
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

BY HAND

Patrick Sharpe, Esq.
Premerger Notification Office
Bureau of Competition
Room 321
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Request for Informal Opinion on H-S-R
Reportability of Acquisition Scenario

Dear Patrick:

As we discussed by telephone today, set forth below is an acquisition scenario for which I would appreciate your opinion as to whether a similar transaction would be reportable under the H-S-R Rules and Regulations.

Company A intends to acquire certain retail leases, fixed assets and inventory from a debtor in possession ("Company B"). In addition, Company A will agree to guarantee a \$500,000 line of credit for Company B, but it is not anticipated that Company A will be called on to pay any portion of the funds guaranteed. Including the guarantee, the acquisition price is expected to be approximately \$13.7 million. As part of the agreement between Company A and Company B, a cap will be placed on how much inventory will be transferred at each retail location at the time of closing. Company A would rather not take any inventory, but as a condition of the sale Company B insisted that Company A commit to take a certain amount of inventory up to the established cap. If the inventory exceeds the cap at any location Company B will either retain and sell the inventory or Company A will agree to sell the inventory for the benefit of Company B. From Company B's

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perspective, a reason for placing the cap on inventory to be transferred is a desire to keep the acquisition price below \$15 million so that H-S-R filings will not be necessary. The reason why Company B does not want the acquisition price to exceed the \$15 million filing threshold is because, for timing reasons, compliance with the H-S-R waiting period would make the transaction impractical. As stated previously, Company A would rather not take any inventory.

It is our believe that this potential acquisition is not competitively significant and the acquisition structure and purchase price are unrelated to any competition issues.

Under this fact scenario, where the acquisition price and the fair market value of the assets to be acquired is less than \$15 million, is there any reason why this acquisition should be reported?

Sincerely,

[Redacted signature]

It this is straight up, as is, with no side deals (contractual arrangements etc.) then this is OK. Otherwise, we are troubled - later talk called [Redacted] 12-3-92

[Redacted] said that the parties will in no way exceed the \$15.7M (now changed to \$14.2M) purchase price. Any extra inventories on hand will be taken by the acquiring person or sold by the acquiring person or behalf of the acquiring person or assignment.

This is OK. JS. Concur 12-4-92 (S)

FROM: [REDACTED]

**STATEMENT ON BEHALF OF [REDACTED]
IN RESPONSE TO THE DECEMBER 2, 1992, FTC PRESS RELEASE
ANNOUNCING THE FILING OF A COMPLAINT**

DECEMBER 2, 1992 -- [REDACTED]

categorically denies the allegations in the Federal Trade Commission's Complaint issued today. The Complaint is not warranted in fact or law.

William J. Ulrich, the person whose conduct gives rise to this action, told the Federal Trade Commission, under oath, that the Bank did not know about his fraudulent activities, and that he actively concealed his conduct from the Bank.

[REDACTED]'s only involvement in this matter relates solely to its position as Trustee for Trusts established for the benefit of William J. Ulrich's children. After a year of investigation, there is no person who has testified that the Bank knew about or participated in any conspiracy, or indeed, in any improper conduct.

w/r

The Bank is shocked and dismayed by these allegations and will vigorously contest the allegations by the Federal Trade Commission.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580
202-326-3100
FACSIMILE 202-326-2050

December 8, 1992

Mr.

RE: Reporting in Item 5 for assets/entities not yet owned.

Dear Mr.

As we have previously discussed on the phone we will need some information from your client to complete the filing.

First we will need the item 5 information, limited to the assets being transferred. We will also need a new certification for the new information.

Second, because your client is selling assets he doesn't presently own, we will need a new affidavit indicating the following:

In the event that a request for additional information or documentary materials is issued, understands and agrees that the extended waiting period will not begin to run until the issuing agency receives a response that substantially complies with the request.

further understands and agrees that a statement that it is unable to comply with the request because it is not the current owner of the assets to be acquired is not an adequate statement of reason for non-compliance under section 7A of the Clayton Act and § 803.3 of the premerger notification rules.

Please forward two originals of the above to me and three originals to the Department of Justice. Reference the PMN number above on your correspondence to both the FTC and Department of Justice.

Sincerely yours,

Hy Rubenstein
Staff Attorney