

802.1

[REDACTED]

March 12 1993

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Dear Ms. Ovuka:

This letter is written as a follow-up to our telephone conference on Wednesday, March 10, 1993, concerning exemption from the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"). As discussed, we have outlined below the terms of the transfer of a [REDACTED] (the "Facility") in a transaction which we believe should be exempt from the Act's reporting requirements under either the "ordinary course of business" exemption (Section 7A(c)(1)) or the "financing lease" exemption (Rule 802.63).

1. Description of the Transaction. In 1990, an industrial company (the "Industrial User") determined that it desired to have the Facility constructed on its premises in order to provide certain of its operations with [REDACTED]. After considering a variety of tax, accounting and other matters, the Industrial User concluded that the preferable way to achieve its goals was to have the Facility owned, constructed, operated and financed "off-balance sheet". Accordingly, the Industrial User contracted with a developer (the "Developer") to own, construct, operate and arrange financing for the Facility on a turn-key basis.

It was determined to obtain financing for the Facility in two stages, with construction loans beginning about the time construction of the Facility commenced and permanent financing replacing the construction loans when construction of the Facility was completed (including satisfactory completion of certain start-up and performance