[redacted]

June 29, 1993

VIA TELECOPY (202) 326-2050

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FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE
JUN 29 12 22 PM '93

Thomas Hancock, Esq.
Federal Trade Commission
Bureau of Competition
Room 303
Washington, D.C. 20580

Re: Interpretation Of "Solely For The Purpose Of Investing"

Dear Mr. Hancock:

We represent [redacted] the current owner of 876,823 shares (5%) of the currently outstanding voting stock of [redacted] (the "Company"). The Company is in the process of registering an initial public offering with the SEC (the "Offering"). The Offering price will be between $15.50 and $17.50 per share. At $17.50 per share, [redacted] current 876,823 shares would be valued at over $15 million.

[redacted] wishes to purchase 500,000 shares in the Offering (at the Offering price) for approximately $9 million, which would bring the total value of its holdings in the Company to approximately $24 million. However, after the Offering, [redacted] percentage interest in the Company's voting stock would be reduced to approximately 6%, entitling it to the exemption from a Hart-Scott-Rodino Act filing set forth in 15 U.S.C. Section 18a(c)(9) (the "Exemption"), provided it meets all the other requirements of the Exemption.

As we discussed on Friday and for the sole reason set forth below, we inquired about the requirement of the Exemption that [redacted] stock be held or acquired "solely for the purpose of investment." [redacted] currently outstanding stock of the Company (shares of Series A and Series H preferred stock) allows it, together with the holders of the other Series A and Series H shares, to elect one of the Company's seven (7) directors (the "Special

Director"). We are concerned that this right to participate in the election of the Special Director might be interpreted by the FTC to be an "...intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer," thereby depriving [redacted] of the Exemption. We do not believe that the Exemption is foreclosed because of the aforementioned fact for the following reasons.

[redacted] owns only twenty-seven percent (27%) of the combined Series A and Series H stock, and the vote of a majority of the Series A and Series H stockholders, voting as a class, is required to elect or remove the Special Director. Therefore, [redacted] cannot alone elect or remove the Special Director. The Company has a total of seven (7) directors, of which the Special Director is only one. As a result, the influence of the Special Director is obviously diluted by the participation of the other six (6) directors. Further, the current Special Director, [redacted] an outside director, has never used his position as leverage to change the Company's philosophy or business direction as determined by its working management team. [redacted] intends to continue to serve as Special Director in the same manner as he has in the past, and [redacted] does not intend to try to replace him. [redacted] is not an officer, director or shareholder of [redacted] and therefore does not have the role of being [redacted] "representative" on the Company's Board of Directors. In fact, other than its minority vote in electing the Special Director, [redacted] is altogether removed from the Company's decision-making process. In our view, all of these facts militate against [redacted] having the necessary ability to "participat[e] in the formulation, determination, or direction of the basic business decisions" of the Company.

In the interest of full disclosure, we wish to bring to your attention some additional facts that we do not think bear upon this issue. [redacted] has previously served as the Chairman of the Board and a director of [redacted], which through a subsidiary owns 100% of [redacted] but [redacted] retired from that position a number of years ago. [redacted] is not currently an officer, director or shareholder of [redacted] or any of its subsidiaries, although (because of his valued advice and many years of experience) he does serve on [redacted] advisory committee. In addition, stock in the Company is also owned by another entity, [redacted], which is affiliated with [redacted] because it owns 17½% of the stock (representing approximately 32% of the voting rights) of [redacted] although [redacted] will not be purchasing any of the Company's stock in the Offering. The value of [redacted] stock in the Company (using the highest Offering price of $17.50 per share) is approximately $20 million (after the Offering, this will be a 4.8% holding), and [redacted] owns approximately 38% of the Series A and Series H stock. [redacted] is a director and an approximately 17% shareholder of [redacted] However, because [redacted] does not own 50% or more of [redacted] stock or have any contractual power to designate a majority of [redacted] directors, it appears that [redacted] does not have the degree of "control" over [redacted] that would be relevant to this inquiry.

Our client is a very conservative [redacted] company which has a number of substantial investments in the United States and does not wish to risk violating any U.S. securities or antitrust laws. Meanwhile, the Company is rapidly proceeding to register the Offering, and expects such registration to issue in about three weeks. Therefore, we would appreciate your prompt conclusion as to the availability of the Exemption to this situation.

Please feel free to call me directly at [redacted]

Very truly yours,

[redacted]

cc: [redacted]

7/1/93

Conclusion is OK. But only because the do not hold enough stock to elect the one director. If they could elect one by themselves, the transaction would not be exempt

T.F.H