801.2(a); 801.1(b)(1)(i) and (ii)

[redacted]

[redacted]

VIA FACSIMILE AND FEDEX

February 17, 1995

Richard Smith, Esq.
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Smith:

This is to confirm our conversation of Friday, February 10, 1995 regarding the applicability of the notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), and the rules promulgated by the Federal Trade Commission thereunder (the "Rules"), to (i) the issuance by a company (the "Acquiror") of a number of shares of its voting securities (the "Equity Financing") to an investment partnership (the "Partnership") and (ii) the subsequent acquisition by the Acquiror of all of the outstanding capital stock (the "Acquisition") of another company.

As we discussed, a single individual (the "Individual") currently holds approximately 52% of the voting power of the Acquiror. No other entity "controls" the Acquiror within the meaning of the Rules. The Individual is also currently the sole owner of a corporation that is the sole general partner of a limited partnership that in turn is the sole general partner (the "General Partner") of the Partnership. The Individual, therefore, through such entities, has the right to manage and control the Partnership's affairs, but neither the Individual nor any other entity is entitled to receive 50% or more of the Partnership's profits or, in the event of dissolution, 50% or more of the Partnership's assets. Accordingly, no entity "controls" the Partnership within the meaning of the Rules.

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As presently contemplated, the Equity Financing will be consummated in full immediately prior to consummation of the Acquisition, although both transactions may be consummated on the same day. The dilutive effect of the Equity Financing, absent attribution of the Partnership's holdings in the Acquiror to the Individual, will be to reduce the Individual's holdings in the Acquiror to approximately 30% of the voting power of the Acquiror.

For purposes of this analysis, you can assume that the Acquisition meets the Commerce test and the Size-of-Transaction test, but that, absent the Individual being deemed the Acquiror's ultimate parent entity, the parties to the Acquisition do not meet the Size-of-Parties test. You can also assume that the Equity Financing does not meet the Size-of-Parties test.

Based on the facts and assumptions set forth above, we have concluded, and we understand that you concur, that:

(1) the voting securities of the Acquiror issued to the Partnership in the Equity Financing will not be aggregated with the voting securities of the Acquiror held by the Individual as long as the Individual is not entitled to receive 50% or more of the Partnership's profits or, in the event of dissolution, 50% or more of the Partnership's assets;

(2) the Individual will not be deemed to be the "ultimate parent entity" of the Acquiror at the time of the Acquisition as long as it is clear that the Equity Financing was consummated in full immediately prior to consummation of the Acquisition; and

(3) neither the Individual nor any party to the Acquisition is required to file a premerger notification form pursuant to the Act in connection with the Acquisition.

We further understand that the conclusions set forth above are based on the facts and assumptions stated herein and that such conclusions may not hold true for any different facts or assumptions.

If the foregoing does not conform with your understanding of our conversation, please call me collect at [redacted]

Very truly yours,

[redacted]

cc: [redacted]

2/21/95 - Called writer and advised that I was in agreement with the conclusion reached in his letter.

R B Smith