801.40 (LLC); 802.40; 803.40(b)

[redacted]

February 27, 1995

BY FE #3155416095

Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Attention: Richard B. Smith, Esq.

Re: [redacted]

This material may be subject to the confidentiality provisions of Section 7A(h) of the Clayton Act which restric[t] release under the Freedom of Informati[on] Act.

Dear Mr. Smith:

Reference is made to our letter to the Premerger Notification Office dated January 11, 1995 (the "letter") and our subsequent telephone conversations. As you requested, we are writing to amplify the contents of the letter regarding additional funds which might be contributed to the Limited Liability Company ("LLC") described in the letter.

We have been advised that it is not now possible to forecast whether there will be a need for further contributions of capital to the LLC. It is believed that the contribution of $16,000,000 described in the letter will be adequate to meet all currently anticipated needs and that the entity will thereafter be self-sustaining. The parties have, however, (i) recognized the possibility of medical losses in excess of those reflected in initial budgets, and other currently unexpected or unknown possible occurrences which would require additional funding and (ii) provided for the means to meet those contingencies. It is not now possible to forecast whether, when or in what amount any such further funds will be required or their form. In the event

[redacted]

that those contingencies require that further amounts be made available to the LLC, under certain circumstances such amounts will be treated in a manner unlike the initial contributions i.e., earn prime rate interest and require repayment on a priority basis when cash is available.

Based on the contents of the letter, our telephone conversations and the matters here set forth, we understand that we may now confirm to the parties that your office has responsibility for reviewing premerger notification issues under the Hart-Scott-Rodino Antitrust Improvements Act and has confirmed that no filing is required for the transactions described in the letter.

We would appreciate confirmation of our discussions on the matter.

Very truly yours,

[redacted]

[redacted] 3/2/95 - Advised writer that since any contingent commitment to the LLC ~~[illegible]~~ is not taken into account in valuing the "voting stock" coming back (See ABA letter #202), particularly in a case such as this when it cannot be valued, the farmers are taking back voting stock valued below 15MM and are not gaining control of an LLC with 15MM in assets since agreements to contribute additional capital cannot be given a "specified amount" valuation (See ABA letter #200). It also appears that later "contributions" are loans rather than contributions, thereby establishing a creditor/debtor relationship, which is not covered by 801.40.

Writer also advised that, on Section B of her 1/11/95 letter at page 11, that the [redacted] were establishing another LLC which would operate like a wholly-owned sub of LLC. (The law does not permit the LLC to form a wholly-owned (sub) but requires at least one other participant.) The second LLC will not get any new contributions and will have no [illegible].

RBSmith