 Rule 801.40  
June 5, 1996

**Via Facsimile**

Ms. Alice M. Villavicencio  
Federal Trade Commission  
Premerger Notification Office  
Room 303  
6th & Pennsylvania Avenue  
Washington, DC 20580

Dear Ms. Villavicencio:


As we discussed yesterday, I have attached a chart demonstrating a transaction currently being contemplated by one of our clients. I believe the transaction is covered by Rule 801.40.

Under the structure currently being contemplated, the shareholders of Company A will contribute significantly all of their holdings in Company A to NEWCO in exchange for shares in NEWCO. Company A is an ongoing business with revenues in excess of \$100 million. NEWCO is a newly created shell. The largest shareholder of Company A (identified in the chart as Shareholder #1, a natural person) holds 44% of the outstanding voting securities of Company A).

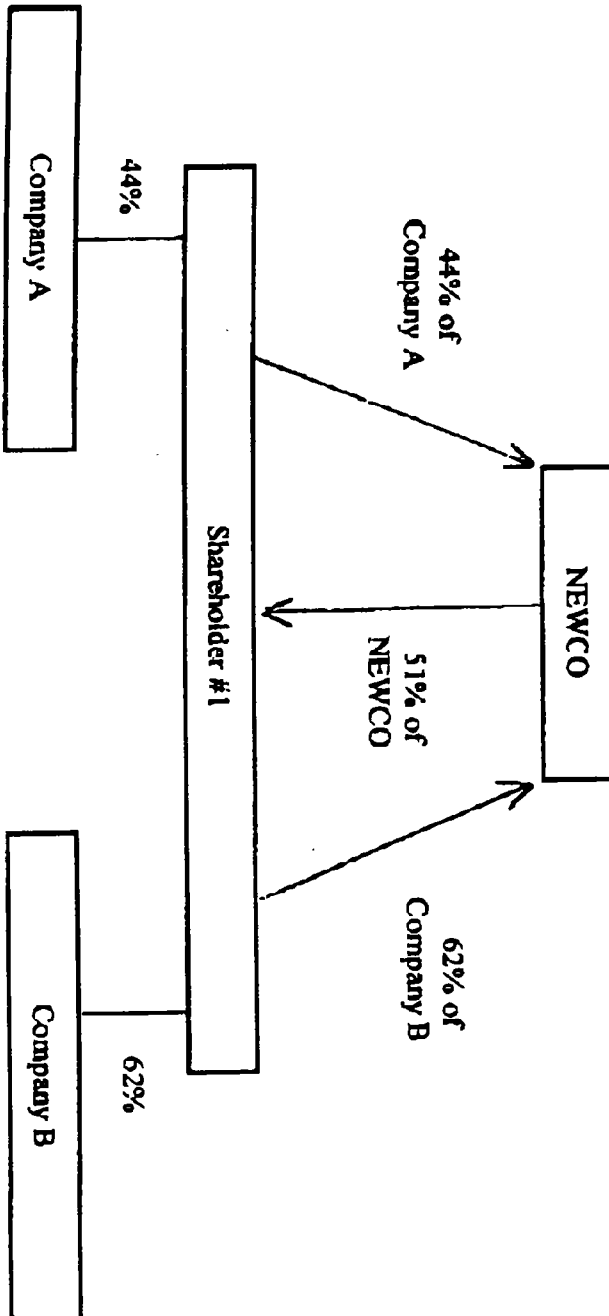
The shareholders of Company B will likewise contribute significantly all of their holdings in Company B to NEWCO in exchange for NEWCO shares. Company B has in excess of \$10 million in assets and annual revenues. Company B's ultimate parent entity is Shareholder #1, holding 62% of Company B.

The remaining shareholders of Company A and Company B will not be engaging in a reportable transaction because they either do not meet the size of the persons test or the size of the transaction test or both.

I understand that NEWCO will not need to make a filing as directed by Rule 802.41. Additionally, under Rule 801.40(a), the contributors to NEWCO will be deemed acquiring persons only, and NEWCO will be deemed the acquired person only. Based upon my analysis, the structure results in a single filing by Shareholder #1 in connection







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801.12

COMPANY XYZ

9 directors total

## Common Stock:

11,000,000 outstanding  
 Entitled to elect 8 directors voting with all stock  
 1 vote per share

## Series C Convertible Preferred:

1 share outstanding convertible into 3,600 shares of Common Stock  
 Entitled to elect 8 directors voting with all stock  
 1 vote per share of Common Stock

## Series D Convertible Preferred:

Will be 325,000 shares outstanding after issuance, convertible into 3,250,000 shares of  
 Common Stock  
 Entitled to vote as a separate class to elect 1 director  
 Entitled to elect 8 directors voting with all stock  
 1 vote per share of Common Stock

Investor A will hold 300,000 shares of Series D Convertible Preferred (convertible into  
 3,000,000 shares of Common Stock)

CALCULATION

$$\begin{aligned}
 & [3,000,000 \text{ shrs Series D held by Investor A} / 3,250,000 \text{ shrs Series D total}] \times 1 \text{ director} / 9 \\
 & \text{directors} \\
 & + \\
 & [3,000,000 \text{ shrs held by Investor A} / 11,000,000 \text{ common stock outstanding} + 3,600 \text{ Series C} + \\
 & 3,250,000 \text{ Series D total}] \times 8 \text{ directors} / 9 \text{ directors} \\
 & = 28.965\%
 \end{aligned}$$