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Rule 801.40

March 13, 1998

AN

Alice Villavicencio  
Federal Trade Commission -  
Pre-Merger Notification Office  
Room 301  
6th and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

SA PER 10 123 11 23

Dear Alice:

Pursuant to our telephone conversations on Thursday, March 12, we are requesting a response as to whether a Pre-Merger Notification filing is required under the Hart-Scott-Rodino Antitrust Act of 1976 (the "Act") for our client's proposed joint venture.

Two joint venturers will create a new corporation ("NewCo") to operate a business. For our purposes, assume that the "size of the person test" ~~has been satisfied~~. *The allegedly person test* The issue surrounds whether the "size of the transaction test" under the facts described below, would also be met. *the SV might meet the test*

*(TSA)* Each of the acquiring parties will put approximately \$2.5 million in cash into NewCo. If the facts ended there, this clearly would not meet the transaction test as NewCo would have under \$10 million in assets. Our question arises over whether the following would be deemed a "guaranty" and thus be considered an additional asset of NewCo under the Act: NewCo will lease certain property from the acquiring companies; the acquiring companies will lease that same property from an affiliated party (a wholly owned sub of

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one of the acquiring parties); the affiliated party will lease the property from an unaffiliated party.

Our concern is that although this is not a traditional guaranty, it could be interpreted as such by the government. If it is, the "size of the transaction test" will likely be met, triggering the filing obligations. However, it appears perfectly reasonable to assume that this is not a guaranty as the acquiring parties may sub-lease to another party in the event NewCo defaults. This is not normally a characteristic of a guaranty.

Agree

If you require additional information in order to further analyze this issue, please feel free to call me. Thank you in advance for your attention to this matter.

Very truly yours,

[Redacted signature]

3/18/1998. Called writer to inform him the size of person test is not met because the "sub-leasing" is not a guaranty and thus would not be included with contribution to the formation of the joint venture.  
(The size of transaction test is not believed to exceed the size of person test used next met).

[Redacted]

[Redacted]