

[REDACTED]  
ATTORNEY AT LAW  
[REDACTED]

[REDACTED]  
&  
[REDACTED]

801.1(c)

March 16, 2000

**VIA EMAIL & U.S. REGULAR MAIL**

B. Michael Verge, Esq.  
Premerger Notification Office, Room H-301  
Federal Trade Commission  
6<sup>th</sup> Street & Pennsylvania Avenue, NW  
Washington, DC 20580

RECEIVED  
MARCH 17 11 15 AM '00  
FEDERAL TRADE COMMISSION  
WASHINGTON, DC 20580

RE: Follow-Up Telephone Discussions

Dear Mike:

determining the total assets held by a natural person who is acquiring voting securities of an acquired

SECTION 1363(b) HSR Act, as amended, 15 U.S.C. § 18a (the "HSR Act"), to the fact scenario described below.

Company A, Company B, and Newco propose to enter into an Agreement pursuant to which Company A and Company B will each become a subsidiary of Newco which will be formed by Company A and Company B.

will merge with and into Company A with Company A being the surviving corporation of such merger, and (ii) B-Sub will merge with and into Company B with Company B being

prior to the transaction, Newco will conduct no business operations or own any assets.

As we discussed, the proposed Transaction is a consolidation, as opposed to a merger, for HSR Act purposes. We concluded that the consolidation would be reportable under the HSR Act with Companies

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conversion of the outstanding capital stock of Companies A and B into Newco Common Stock would not be subject to the HSR Act requirements.

We concluded that the conversion of the outstanding capital stock of Companies A and B into Newco Common Stock would be deemed to be an acquisition of Newco Common Stock by the shareholders of Companies A and B and that each shareholder acquisition would need to be separately examined to

If an individual shareholder of Company A or B receives Newco Common Stock valued at more than \$15 million, the size-of-the-transaction test is met. In addition, because Companies A and B will be wholly-owned subsidiaries of and deemed to be within Newco at the time the shareholders receive Newco Common Stock, the assets and annual net sales of Companies A and B will be attributed to Newco, which will result

Subject to the limitations of paragraph (d) of this section, the total assets of:

(1) An acquiring person that does not have the regularly prepared balance sheet

acquired person:

- (i) All assets held by the acquiring person at the time of the acquisition,
- (ii) less all cash that will be used by the acquiring person as consideration in an acquisition of assets from, or in an acquisition of voting securities issued by, that acquired person (or an entity

As we discussed, you have confirmed that according to the last phrase of subsection 801.11(e)(1)(ii) the Company A or B shareholder acquiring voting securities in Newco may exclude the voting securities the shareholder owns in Company A or B from the total assets of the shareholder's size-of-person. At the time the shareholder receives Newco Common Stock, Companies A and B are entities within the acquired person

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securities are not included within the total assets of the shareholder for purposes of determining the size of the shareholder person.

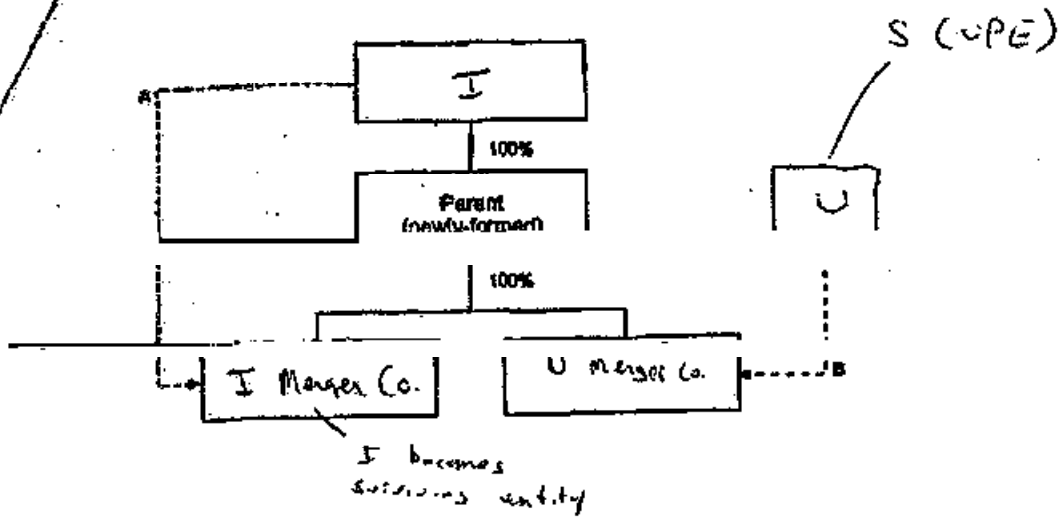
Therefore, pursuant to Rule § 801.11(e)(1)(ii), a shareholder of Company A and/or B who receives Newco

You also confirmed that even if the Company A or B voting securities are required to be included in the total assets of the acquiring shareholder person, the value of the securities may be based upon the person's cost basis of the securities or any other appropriate valuation method, and does not need to be based on current market value of the securities.

Again, thank you for your assistance in understanding the applicability and scope of Rule § 801.11(e)(1)(i)-(ii) as it relates to the fact scenario we discussed and as described in this letter.

If you have questions or if this letter does not accurately summarize our discussions and conclusions, please call me at your earliest convenience.

[REDACTED]  
[REDACTED]  
[REDACTED]  
FOR THE FIRM  
[REDACTED]  
cc [REDACTED]  
[REDACTED]



In consideration of U merging with and into

U Merges Co. U Merges Co.  
- - - - - 50% of the stock in

U and I.

I & S FILE AS BOTH A single & acquired  
IN THE CONSOLIDATION OF I & U.  
S'S ACQUISITION OF A CONTROLLING INTEREST IN  
PARENT CAN BE SUBSUMED IN ITS FILING  
AS UPE OF U IN THE CONSOLIDATION.  
IN EVENT OF NO OTHER AGREEMENT

3/16/00