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Letterhead

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September 26, 2000

VIA FACSIMILE

Mr. Patrick Sharpe
Federal Trade Commission
Premerger Notification Office
Bureau of Competition, Room 301
6th & Pennsylvania, N.W.

Dear Mr. Sharpe:

September 15, 2000. I have also posed an additional twist on which I would appreciate your thoughts. The new question is reflected in Paragraph No. 3 of the Analysis section below.

A is a newly formed corporation and its own ultimate parent entity. No other entity has beneficial ownership of 50 percent or more of its voting securities or has a contractual right to designate 50 percent or more of its directors. A plans to acquire nine related entities that are all controlled by the same ultimate parent entity, natural person B. A will acquire 100% of

and D or as several different deals (e.g., the entities acquired by merger may be in a separate agreement than the other acquisitions for reasons unrelated to HSR.)

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regularly prepared balance sheet or statement of income and expense. Accordingly, it must

additional consideration for the acquisition. Thus, A will have more than \$100 million cash assets, on a pro forma basis, immediately prior to consummating the acquisition of the nine entities from B. When the aggregate amount of cash that A will use as consideration (\$120

ANALYSIS

1. Under these circumstances, you have advised me that A may treat its acquisition of nine entities from B as a single acquisition for the purpose of A availing itself

Office would not take the position that we would need to look separately at A's size of person for its acquisition of each of the nine entities seriatim from B. We understand that the PNO distinguishes between this situation -- involving multiple simultaneous acquisitions from one several different UPEs at the same time. In that situation, you advised me that it is the view of

that does have a regularly prepared balance sheet and therefore cannot use 801.11(c) for its "next" simultaneous acquisition) then a filing would be required. This distinction appears among the separate while all acquiring them even if they are acquired by acquisition from different UPEs.

2. You have further advised me that for the purpose of calculating A's assets in the first instance (before applying 801.11(c), if applicable), A must include the value of any borrowed monies being used for the acquisition *regardless* of whether such assets (cash) were ever deposited into A's bank accounts. In other words, if A borrowed funds from a Bank but directed the bank to pay B directly for the entities to be purchased, the value of those payments would still be included as an asset of A for the purpose of calculating A's size of person.

not included if passing through

[REDACTED]
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3. A third scenario that we did not discuss the other day is as follows. Suppose in the example above, that newly formed entity A which is its own UPE and has no regularly prepared balance sheet acquires C (which is its own ultimate parent entity), before the nine entities held by B, for more than \$100 million in cash and stock in A. C has a regularly prepared balance sheet showing total assets and net sales at about \$1 million. Upon completing that acquisition -- assuming that A had not prepared a different balance sheet -- A would have total assets for HSR purposes of \$1 million plus whatever other cash or other assets A holds. Thereafter, A acquires the nine entities from B in a predetermined sequence, pursuant to the

the acquisition of each entity from B, A will inherit that entity's regularly prepared balance sheet.

consideration for each entity as it is purchased, A may never be a \$100 million person before

the entities already purchased would be \$97 million. Assuming that A would have no other assets, A would therefore still not be a \$100 million person and arguably no HSR would be required. Of course, this is exactly the "deal by deal" approach for multiple acquisitions from

If Paragraph Nos. 1 and 2 of the above analysis do not comport with the advice

[REDACTED]
[REDACTED]
I concur, called [REDACTED] 9/26/00
P. Sharpe