[redacted]

April 26, 1988

FEDERAL EXPRESS
EXPEDITED ATTENTION REQUESTED

Federal Trade Commission
Room 303, Federal Trade Commission
Seventh and Pennsylvania

RE: Pre-Merger Notification Filing--Treatment of Intercompany Sales for Purposes of Application of FTC Rule 802.50

Dear Mr. Kaplan:

This letter is in regard to our telephone conversation concerning the treatment of intercompany sales for the purpose of determining aggregate sales under FTC Rule 802.50. The basic

[redacted] [illegible] [redacted] sales in excess of $100 million. [redacted] proposes to purchase 100% of the capital stock of [redacted] a company based and incorporated in the United Kingdom. [redacted] owns 100% of the capital stock of four separate companies, one incorporated and based in Germany, one in Switzerland, one in Holland, and one in Austria. The Switzerland subsidiary owns 100% of the capital stock of a corporation incorporated and based in the State of North Carolina [redacted] All of the operating subsidiaries of [redacted] principally engaged in the business of manufacturing and selli[redacted]

[redacted] had sales during 1987 of $18.7 million and had assets at December 31, 1987 of $9.3 million. Neither [redacted] nor any of its other subsidiaries had significant assets in the U.S. or made sales into the U.S. other than sales made to [redacted]

[redacted] manufactures [redacted] from parts purchased from the German subsidiary of [redacted] in 198[redacted]

Mr. Wayne Kaplan
April 26, 1988
Page 2

[redacted] purchased $6.7 worth of parts from the German subsidiary. [redacted] added approximately an additional $5.5 million in labor[1] and materials to those parts in 1987 to produce finished goods.

Applying those facts to Rule 802.50 leads, we believe, to the conclusion that this transaction is exempt from the notification requirement of the Act. Rule 802.50(b) exempts from the Act a U.S. Company's acquisition of stock of a foreign issuer unless either:

1. The foreign issuer has assets in the U.S. in excess of $15 million; or

[illegible] the U.S. of $25 million or more during its most recent year.

[redacted] the foreign issuer) total U.S. assets, on an aggregated basis, are $9.3 million; thus subpart 1 is satisfied. Whether subpart 2 is also satisfied depends on whether "aggregate sales" includes the $6.7 million in intercompany sales from [redacted] German subsidiary to [redacted] We believe that intercompany sales should not be [illegible] for the following reasons:

1. If intercompany sales are included in aggregate sales, then the intercompany sales will be included twice since [redacted], after additional manufacturing, resells the same items it purchases from the German subsidiary of [redacted]

2. Generally Accepted Accounting Principles ("GAAP") [illegible] the elimination of intercompany sales when [illegible]

notification rules. See Letter to Barry J. Raingold, December 7, 1978, summarized in Premerger Notification Practice Manual, American Bar Association, ("Practice Manual"), No. 97; Letter to Mr. Thomas Hancock, April 6, 1979, [redacted] [illegible] Letter [illegible]

[1] [redacted] cost of sales for 1987 was [illegible]

to Dana Abrahamsen, February 1, 1982, summarized in the Practice Manual, No. 107.

3. When employing market share analyses in reviewing mergers under Section 7 of the Clayton Act, courts eliminate the effect of intercompany sales. See In re Corrugated Container Antitrust Litigation, 1981-1 (CCH) Trade Cas. ¶64,114. Cf. United [illegible] 333.356 S.D.N.Y. (1980).

4. FTC Rule 801.11 requires that sales be reported on [illegible] of intercompany sales. If a reporting person does [illegible] clearly evidences the Commission's recognition of the fact that including intercompany sales in sales results in a double counting of sales.

5. The purpose of the Act would not be furthered by requiring the inclusion of intercompany sales in sales. The Act makes it possible for the FTC and [illegible] entities outside of the corporate family, not by shuffling product from one subsidiary to another as part of the process of manufacturing the product for final sale.

For these reasons, we believe that aggregate sales, as used in Rule 802.50(b)(2), do not include intercompany sales. Please advise of the position of your office on this matter. Please give this matter expedited attention and respond to me or [redacted] this office by Monday, May 9, 1988.

The letter ignores the Q
Of the indirect acquisition [redacted] which

Very truly yours,

[redacted]

[illegible]

[illegible] included in #725,[illegible]
Mat be into the U.S. Wayne Kaplan 4-29-88.