

June 1, 1988

FEDERAL EXPRESS

Mr. Patrick Sharpe
Compliance Specialist
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

Re: Interpretation of "Annual Net
Sales" under the Hart-Scott-Rodino
Antitrust Improvements Act

Dear Mr. Sharpe:

We are submitting this letter in accordance with
our telephone conversation yesterday. Our client,
[REDACTED] is currently negotiating the sale
of all of the outstanding stock of one of its wholly-owned

[REDACTED] and it is unclear whether a filing
under the Hart-Scott-Rodino Antitrust Improvements Act (the
"Act") is required in connection with this transaction

meets the "size of the transaction" test under the Act.
The transaction has a value of less than \$15 million, but
because this is a transaction where the acquiring person

[REDACTED] we must consider whether the annual net
sales or total assets of [REDACTED] exceeds \$25
million. In this case, total assets are less than \$25
million, but it is unclear whether the annual net sales of
[REDACTED] are greater than \$25 million.

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As we discussed yesterday, the operations of

and sold through [redacted] by independent contractor registered representatives. The commissions earned on each transaction are reflected in their entirety on [redacted] income statement, and the portion of such commissions which is remitted to the independent contractor registered representatives is then paid out of the total

acts as a conduit with respect to a substantial portion of each commission. That the commissions are remitted to independent contractors rather than employees reinforces the characterization of [redacted] as a conduit with respect to that portion of the commissions so remitted. Under these circumstances, it is unclear under the Act and the rules promulgated thereunder whether "annual net sales" was intended to cover the total commissions figure or the net commissions figure.

We enclose [redacted] income statements for

March 31, 1987. As you will note from the income statements, [redacted] for the most recent fiscal year, had revenues of [redacted] which included [redacted] commissions. However, if the commissions of [redacted] paid out to the independent contractor

After you have had an opportunity to review this letter and the attached income statements, please advise me of the appropriate interpretation of "annual net sales" under these facts. My direct line is [redacted]

Thank you for your consideration.

[redacted] Enc.

cc: [redacted]

[redacted] called [redacted]

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on the income statements [redacted] for purposes
The total revenues are [redacted] of [redacted]