[redacted] NEED TO FILE AS FCI.

[redacted] ACQUISITION EVEN THOUGH HOLDING [redacted] OWN [redacted] V.C.

June 30, 1988

may be subject to ... provision of ... the Clayton Act ... under the ... Act

After further discussion with parties, the parties were advised that ... was not necessary ... of the Partnership A did indeed be ... a fact that ... shareholder of ... as a result of the acquisition

Victor Cohen, Esq.
Federal Trade Commission

[redacted]

served now

if there was any chance that ...

Dear Mr. Cohen:

violation. 9 mil

Further to our conversations this week, attached is a copy of a letter to Wayne Kaplan describing the original structure of a leveraged buy-out in which the owner of an operating division was to sell assets of that division to a newly-formed corporation which would be jointly owned by the seller and two investment partnerships. For reasons described in that letter, we concluded that the transaction was not subject to Hart-Scott-Rodino Act reporting and waiting requirements.

Subsequently, the transaction was restructured so that [redacted] would be created and funded by the two investment partnerships described in that letter in advance of the leveraged buy-out. This was done to ensure that [redacted] would have assets available to compensate the seller in the event [redacted] breaches its obligation under the agreement to use best efforts to consummate the buy-out. As a result of this advance funding [redacted] the amount

[redacted]

accordingly deemed to be [redacted] 'ultimate parent entity."

Partnership A is a $10 million person. The [redacted] is a $100

[redacted]

jurisdictional elements under the Hart-Scott-Rodino Act are present.

However, when we look at the substance of the transaction, it is clear that [redacted] and not Partnership A) is the "acquiring person" under the presently contemplated structure, just as it was in the structure cleared last March. Rule 801.2(a) states that an "acquiring person" is a "any person which, as a result of an acquisition, will hold...assets, either directly or directly...."

Under the revised transaction structure, the seller will receive from [redacted] newly-issued stock representing approximately 40% of the then total outstanding voting stock o[redacted] in exchange for the assets. This will instantaneously dilute the ownership interests held by each of the two partnerships, with the result that as of the time the exchange is effected, no person or entity will own 50% or more of the stock o[redacted] and [redacted] will be its own ultimate parent entity. Thus, Partnership A will never "hold" (within the meaning of [redacted]) [redacted] and will therefore never be an "acquiring person" within the meaning of the Rules.

Because only [redacted] will be an acquiring person under the Rules, we may disregard the happenstance that early funding of [redacted] caused it to have an ultimate parent entity immediately before, but not at the moment it becomes an acquiring person. Partnership A's holdings need not be aggregated with [redacted] to determine whether [redacted] has a balance sheet at the time of the acquisition showing that it has approximately $5 million in demand accounts, or its size is determined [redacted] purposes.

[redacted] fall within the jurisdiction of the Hart-Scott-Rodino Act.

The Seller's acquisition of stock in [redacted] which entity is its own ultimate parent entity and is not a $10 million person. Moreover, the seller' acquisition of stock in [redacted] is exempt pursuant to Rule 802.20.

I would appreciate a telephone call at your earliest convenience confirming that under these facts the described transaction is not reportable. Thank you for your time and thoughtful consideration of this matter.

Very truly [redacted]

[redacted]

Enclosure

[redacted]