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PREMERGER NOTIFICATION OFFICE

February 13, 1989

[redacted]

Victor Cohen, Esq.
[redacted]
Room 303
6th Street & Pennsylvania Avenue, N.W.
[redacted]

Re: Applicability of 15 U.S.C. § 18a(c)(10) to the Elimination of a Holding Company

Dear Victor:

As per our telephone conversations of February 9 and 10, 1989, I am writing to you to set forth the transaction which we discussed and our reasons for believing that the proposed transaction is exempted by 15 U.S.C. § 18a(c)(10) from the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act").

The proposed transaction is a restructuring which will take place for the purpose of eliminating a holding company ("H"). Presently, two persons ("O" and "P") each hold 50 percent of the voting securities of H. The sole asset of H is approximately 35 percent of the outstanding voting securities of a publicly traded company ("A"), which securities are valued in excess of $10 million. In the proposed transaction, H will be merged into A and the stock in H, presently held by O and P, will be cancelled. The stock in A, presently held by H, will become treasury stock of A. A will transfer an identical number of shares in A, presently held by A as treasury stock, to O and P, 50 percent each. After the proposed transaction, there will be no change in the number of shares in A

[redacted]

outstanding or in the identity of the holders; the only change is that stock in A will be held for HSR purposes directly by O and P, instead of being held by them through H.

15 U.S.C. § 18a(c)(10) exempts from the requirements of the Act "acquisitions of voting securities, if, as a result of such acquisition, the voting securities do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer." In the proposed transaction, the acquiring persons' (O and P) per centum share of outstanding voting securities of the issuer [redacted] poses by O and P actually decreases, a fact which underscores the result of this analysis, as the exemption extends to all acquisitions which do not increase the acquiring person's per centum share of the issuer, rather than being limited to those acquisitions which do not change the acquiring person's share [redacted]

C.F.R. § 802.10, which exempts stock splits and pro rata stock dividends and does not discuss the situation encountered herein. However, a statute does not need a promulgating rule to be effective, and there is no reason to read § 802.10 to limit the statutory exemption. One portion of proposed § 802.10, which would have exempted acquisitions of voting securities "pursuant to an issue of new shares offered proportionately to all shareholders," was rejected because such issuance, if not accepted by all shareholders, could increase an acquiring person's share of the outstanding voting securities of A. There is no chance of that here. Unlike the stock splits and pro rata stock dividends exempted by § 802.10, there is not even the chance that the proposed transaction could increase the market value of either acquir- [redacted]

This transaction is arguably not even an acquisition of voting securities, unless an acquiring person can be deemed to acquire voting securities from itself. O and P are the

and they are the holders of the stock in A subsequent to the proposed transaction.

[redacted]

any reporting obligation under 16 C.F.R. § 801.20. The rule states that it applies to acquisitions "not otherwise exempted section 7A(c)." Similarly, the statement of Basis and Purpose for § 801.20, 43 Fed. Reg. 33450, 33482, states that "if the later acquisition is exempt under either the act or the rules, § 801.20 does not create a reporting obligation."

I look forward to discussing this further with you at your earliest convenience. If you have any questions or [redacted] regarding the foregoing, please do not hesitate to [redacted]

Sincerely,

[redacted]