801.10(c)(2)

August 29, 1990

This material may be subject to the confidentiality provisions of Section 7A(h) of the Clayton Act which restricts release under the Freedom of Information Act

BY HAND

Richard B. Smith, Esq.
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Informal Opinion Letter

Dear Mr. Smith:

I am writing to confirm the substance of our telephone conversation on August 28, 1990 in which, based on the facts I provided you, which are outlined below, you concluded that a Hart-Scott-Rodino filing was not required for the described transaction.

Facts

Company A, its own ultimate parent entity, will acquire

Company B essentially provides that Company A will pay Company B approximately $18 million in cash, approximately $9 million of

The parties currently contemplate structuring the transaction such that Company A will convey approximately $18 million worth of its stock to Company B at closing. Prior to closing, Company B will have extinguished the debt owed to it by Company C. At closing, Company B will convey the stock of Company C to Company A and also Company B will immediately resell

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*/ Company B as used in this letter refers to and includes Company C's ultimate parent entity and other subsidiaries of the ultimate parent entity.

the stock of Company A to or through an investment banking firm for approximately $18 million.

Analysis

Company A's Acquisition of Company C Stock

Because Companies A and B collectively satisfy the

million in annual net sales or total assets, the critical inquiry

not agreed to retire just prior to closing the approximately $9 million in debt owed by Company C to Company B. Put another way, if the stock of Company C were sold to Company A with Company C's existing debt in place, Company A would pay less than $15 million for that stock. Thus, although there may be one $18 million payment being made from Company A to Company C, not all of it is

retirement of Company C's debt.

To further illustrate the issue, we discussed two variations on this structure. First, if Company A purchased the voting securities of Company C (with the intra-company debt in

Similarly, the FTC has historically excluded from consideration for the voting securities money that is paid at closing but not

the money paid to those consultants would not be used to

In sum, the value of the consideration being conveyed for the voting securities of Company C is less than $15 million and thus, the acquisition of Company C by Company A should not be reportable.

Acquisition of Company A's Voting Securities by Company B

For a brief moment, Company B will acquire title to approximately $18 million of Company A's voting securities before

Company B by Company A constitute less than 10% of the voting

16 C.F.R. § 802.9.

transactions described above do not require notification under the Act. I would appreciate learning from you as soon as possible

Sincerely,

8130 [illegible]

payment of Company C's debt to Company B was disguised consideration for the purchase of C's stock, there is no basis for questioning the 9MM acquisition price negotiated by A and B for C's stock. No filing is required.

RBSmith