[redacted]

September 27, 1990

VIA TELECOPIER (202-326-2050)

Thomas Hancock, Esq.
Pre-merger Notification Office
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Hancock:

This letter is a follow-up to our telephone conversation of September 26 wherein I requested the views of the pre-merger office with regard to a pre-merger notification rule interpretation. The situation I described was sufficiently unique that you requested this letter, which restates the relevant facts, so that you could consult with your colleagues before responding to my inquiry. I appreciate you taking my telephone call and the opportunity to present the issue to you for your consideration. The question ultimately at issue in my fact

Facts Assumed

The factual setting I presented to you is as follows:

Corporation A is a recently formed [redacted] nonprofit corporation (having no corporate members) and a self-perpetuating Board of Directors. It intends to arrange financing in order to acquire assets from

Corporation C, an entity which has annual net sales or total assets of $100,000,000 or [redacted] satisfy the "size of transaction" test.

Corporation B is an inactive, [redacted] nonprofit corporation which has been in existence for approximately one year. It has no corporate members and a self-perpetuating Board of Directors.

A bylaw provision of Corporation A states:

> "Notwithstanding any other provision of [redacted] the directors of the Board of Directors of the Corporation shall be directors of the Board of Directors of B."

Please further assume that there is no contractual [redacted]

Question Posed

The question I posed to you is whether the above-referenced bylaw provision of Corporation A represents "control" within the meaning of Rule 801.1(b) such as to result in a determination that Corporation B is the ultimate parent entity of Corporation A for purposes of computing the annual net sales and [redacted]

Additional Information

[redacted]

mation relevant to your consideration of this request for an informal opinion:

1. The bylaws of Corporation B provide that the Board of Corporation B can remove any directors of B without cause by a majority vote of the directors then in office. This fact, coupled with the overlapping director requirement of Corporation A's bylaws as referenced above, means that if [redacted]

[redacted]

serve as a common director of both corporations A and B. The

practical result is that the Board of Directors of Corporation B can control the composition of a controlling majority of the Board of Directors of Corporation A.

2. Corporation B has been determined exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code ("IRC"). In addition to Corporation B, the exemption determination applies to all "subordinate" organiza-

[redacted]

income tax under Section 501(c)(3) of the IRC.

Request for Interpretation

I understand from our telephone conversation that you will share this letter or its contents with your colleagues in the Pre-merger Notification Office and contact me with your views, based on the facts described in this letter, regarding whether Corporation B "controls" Corporation A within the meaning

[redacted]

further analysis of the necessity for filing, and/or a filing itself, necessitates, as a threshold matter, a determination on

[redacted]

above telephone number. I look forward to a prompt response to our inquiry.

Sincerely,

[redacted]

[redacted]

10/1/90
B controls A because B has the power to eliminate directors of A.

TH

10/1/90
B control A because B has the power to eliminate directors of A

TH