[redacted]

March 16, 1992

[redacted]

Via Facsimile

Thomas Hancock, Esq.
Federal Trade Commission
Premerger Notification Bureau

Dear Mr. Hancock:

In our telephone conversation today, I referred to our telephone discussion under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. As you requested, I am writing to set forth the new facts and the questions I posed to you.

Corporation A holds approximately 48% of the outstanding common shares of [redacted]. The ultimate parent entity is an individual with investments in several enterprises. Neither Corporation A nor its ultimate parent entity regularly lends money.

An individual [redacted] owns 20% of the [redacted] and has done so[redacted], and Corporation A names the other two directors.

Corporation A made a substantial loan to X, which was secured by X pledging to Corporation A his 20% of the common shares of the Issuer (the "Pledged Shares"). The loan and pledge agreement was negotiated at arms' length. The loan is now in default. Were Corporation A to acquire the Pledged Shares through foreclosure, it may not resell those shares, either because of unfavorable market conditions or because if prefers to hold a larger stake in the Issuer.

Corporation A is now considering three options. My question is whether some or all of these options are exempt from premerger reporting under the HSR Rules.

1. Under the loan and pledge agreement, Corporation A [redacted] terminate this power to vote the shares by curing the default.

2. Under U.C.C. §9-505, Corporation A may give notice to X that it proposes to retain the Pledged Shares in satisfaction of X's debt. Title to the shares would [redacted]

3. Under U.C.C. §9-504, Corporation A may sell the Pledged Shares at a public sale. Corporation A intends to do this [redacted] option 2 above. Corporation A could, and probably would bid at the sale, and may be the highest, if not the only bidder. A would acquire full title and interest if it purchases the Pledged Shares at such a sale.*

In our conversation today, I suggested that, based on transaction entered into in the ordinary course of the creditor's business," premerger reporting would not be required under any of these options, since all are, at most, "an acquisition of collateral . . . in foreclosure, or upon default, . . . by a creditor." I also suggested that under Option 1, where Corporation A votes the Pledged Shares only as pledgee, it would not make an acquisition of the shares thereby since (a) X would retain the beneficial interest of those shares, (b) cash dividends and proceeds from the disposal of the shares could only be applied to reduce X's debt, and (c) since X could cure the

* I recognize that if an person or entity other than A

default at any time, the situation was analogous to a revocable proxy which is, to my understanding, not an acquisition under the Rules.

Once you have had an opportunity to review [redacted] cooperation.

Sincerely yours,

[redacted]

[redacted]

3/17/92

Talk w/ Peter that the proposed transactions would not be deemed under § 802.63 because A and Issuer do not stand in a control relationship and A and X do. The final proposed outcome -- where A obtains [illegible] upon default

2 to 802.63 seem very misleading in the context. These examples -- [illegible] upon default are always exempt whether they are acquisitions of assets or voting securities of another issuer.