(JS)

§802.63(a)

[redacted]

March 30, 1992

BY HAND

[redacted]

Assistant Director for Premerger Notification

Room 306
Washington, D.C. 20580

Dear John:

I am writing to confirm the substance of our telephone conversation on March 26, 1992, in which you advised that no premerger notification would be required under the circumstances

common shares of a Delaware corporation ("the Issuer"). Corporation A's sole investment is this interest in the Issuer, but its ultimate parent entity is an individual with investments in several enterprises. Neither Corporation A nor its ultimate parent entity regularly lends money.

An individual, X, owns 20% of the common shares of the Issuer. X does not control or have any interest in Corporation A. Under a shareholder agreement, X is entitled to name himself and one other individual as two of the four directors of the Issuer (and has done so), and Corporation A is entitled to name the other two directors (and has done so).

Corporation A made a substantial loan to X, which was secured by X's shares of the Issuer ("the Pledged Shares"). Neither Corporation A nor its ultimate parent entity controls a competitor of X or of the Issuer. The loan and the pledge agreement were negotiated at arm's length. At the time of the

[redacted]

John M. Sipple, Jr., Esquire
March 30, 1992

[redacted]

to Corporation A, together with a blank stock power, signed by X.

The pledge agreement provides that upon default by X, cash dividends, if any, would be paid to Corporation A and applied to

[redacted]

and the blank stock power to X.

The pledge agreement also prohibits X from disposing of the Pledged Shares. Corporation A may not dispose of the shares

[redacted]

X has defaulted on the loan from Corporation A. Corporation A therefore has a number of options under the pledge agreement and under U.C.C. Article 9.

1. On the basis of a power of attorney included in the pledge agreement that authorizes Corporation A to vote the Pledged Shares upon a default by X, Corporation A could [redacted] these circumstances, Corporation A would not be acquiring beneficial ownership of the Pledged Shares, and therefore premerger notification would not be required.

2. Corporation A could insert "Corporation A, as pledgee" as the transferee in the blank stock power it is holding, and submit it to the Secretary of the Issuer. The record ownership of the Pledged Shares would then be transferred to

[redacted]

those shares based upon the pledge agreement. You advised that under these circumstances, Corporation A would not be acquiring beneficial ownership of the Pledged Shares, and therefore premerger notification would not be required.

3. Corporation A could insert "Corporation A" as the transferee in the blank stock power, and submit it to the Secretary of the Issuer. The record ownership of the Pledged Shares would then be transferred to "Corporation A", and as a matter of Delaware law, Corporation A as the record holder would be entitled to vote the shares. You advised that under these

[redacted]

ownership of the Pledged Shares, and therefore premerger notification would not be required.

4. Under U.C.C. § 9-504, Corporation A could sell the Pledged Shares at either a public or a private sale. Given that [redacted]

would acquire all rights, title and interest in the Pledged Shares, and record ownership of those shares would be transferred to "Corporation A" (if this had not already occurred in the manner described in paragraph 3 above). It is our view that an acquisition by Corporation A of the Pledged Shares at a public sale would be an "acquisition in foreclosure" under § 802.63(a) [redacted]

foreclosure, or upon default, . . . by a creditor in a bona fide credit transaction entered into in the ordinary course of the creditor's business." If, however, a person other than [redacted] that acquisition would not be exempt under § 802.63(a).

5. Under U.C.C. § 9-505, Corporation A could give notice to X that it proposed to retain the Pledged Shares in satisfaction of X's debt. If X objected within 21 days after receiving such notice, Corporation A would have to proceed under U.C.C. § 9-504. If, however, X did not object within 21 days, [redacted]

circumstances, Corporation A's acquisition of the Pledged Shares [redacted]

§ 802.63(a), as "an acquisition in foreclosure, or upon default, . . . by a creditor in a bona fide credit transaction entered into in the ordinary course of the creditor's business."

We thank you [redacted] for your very kind and patient attention to this matter. In accordance with your

Office's standard practice, unless we hear otherwise within three business days, we and our clients will proceed on the

Sincerely,

[redacted]

Called on 3/31 to confirm that the letter reflects the advice provided.

[redacted] that this amends § 802.63 was extended for an arms length loan transaction to a person who was represented to not to be a competitor of the A or its ultimate parent [illegible]. However, the [illegible] because the interpretation of 802.63 to creditors other than banks and similar financial institutions was under consideration by the Premerger Office.