801.11(e)
801.1

[redacted]

February 11, 1994

Via Facsimile

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Premerger Notification Office

This material may be subject to the confidentiality provisions of Section [illegible] which restrict [illegible] Act.

[redacted]

Hart-Scott-Rodino Anti-Trust Improvements Act of 1976

[redacted]

(the "Rules") promulgated under the Act. Our analysis, which is set forth following the Statement of Facts, lead us to conclude that the transaction does not require the filing of an HSR Form. As you may recall, you informally concurred with this conclusion, but stated that you would review the issue more carefully if we set forth our position in writing. After you have reviewed this letter, please advise us at your earliest convenience that you concur in our conclusion.

STATEMENT OF FACTS

[redacted]

substantially all of the assets of the [redacted]) of seller company

("Seller"). [redacted] is engaged in the manufacture and sale of component parts for the auto industry. The assets to be acquired include all of the shares of capital stock of a subsidiary of Seller, the business of [redacted] and substantially all other assets owned or used by Seller exclusively in the operation of [redacted] (the "Assets").

Seller is engaged in commerce and has annual net sales or total assets in excess of [redacted]

The ownership structure of Acquisition Co. will be as follows:

Member Name	Ownership Percentage
Individual A	49%
Individual B	20%
Individual C	20%
Irrevocable Trust[1]	11%
Total	100%

None of the Investors will be entitled to 50% or more of the profits of Acquisition Co. or to 50% or more of the Assets of Acquisition Co. on liquidation. In addition, at the time of formation, Acquisition Co. will have equity capital of less than $10,000,000 [redacted]

[redacted]

liability company formed under the recently enacted [redacted] because of certain tax and non-tax benefits available to a limited liability company which are not available to corporations, the current form of entity for the Investors' other enterprises.

2. The Investors desire to isolate the business operations to be conducted by [redacted] operational and control reasons.

3. To achieve part of his estate planning objectives, Individual A at this time

[redacted]

and Individual A will not retain a reversionary interest in the corpus of the trust. ok

desires to place funds in an irrevocable trust for the benefit of his minor children. The trustee, in turn, will subscribe to an 11% ownership interest in Acquisition Co. Additionally, because of Individual A's estate planning objectives, it is necessary that Acquisition Co. be a limited liability company rather than an S Corporation because a trust is an impermissible shareholder of an S Corporation under the Internal Revenue Code or 1986.

ANALYSIS

A. Control.

The Act provides that if the ultimate parent entity of Acquisition Co. has total assets of more than $10,000,000, then Acquisition Co. and Seller's ultimate parent entity are both required

(1) *Either* (i) Holding 50 percent or more of the outstanding

more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity; or

(2) Having the contractual power presently to designate 50 percent

16 C.F.R. §801.1(b). Thus, absent control by an Investor, Acquisition Co. would be deemed to be the ultimate parent entity under the Rules.

Although Individual A is also the settlor of the irrevocable trust for the benefit of Individual A's minor children, the ownership interest held by the trust is not attributed to Individual A by virtue of §801.1(c)(3) of the Rules. Therefore, no Investor is in "control" of Acquisition Co. within the meaning of §801.1(b). Hence, Acquisition Co. is the "ultimate parent

B. **Asset Test.**

Because Acquisition Co. will be a newly formed entity, it will not have a "regularly

the "total assets" of an acquiring person that does not have a regularly prepared balance sheet is

acquired person and less all cash that will be used for expenses incidental to the acquisition. Id.

expenses incidental to the acquisition equals an amount less than $10,000,000. Accordingly, subject to the provisions of §801.90 of the Rules (dealing with devices for avoidance of filing), we believe there is no filing requirement under the Act.

C. **Devices for the Avoidance of Filing.**

Section 801.90 of the Rules, dealing with devices for avoidance of filing, provides:

> Any transaction(s) or other device(s) entered into or employed for the purpose of avoiding the obligation to comply with the requirements of the Act shall be disregarded, and the obligation to

16 C.F.R. §801.90.

In previous telephone conferences which this office has had with the Federal Trade Commission (the "FTC")[2], we have been informed that if there is any reason other than the

ownership differences; (iii) tax ramifications; (iv) control and operation differences; (v)

[redacted]

In view of the reasons for forming Acquisition Co. for the purpose of acquiring the Assets, as set forth in the Statement of Facts, we believe that §801.90 does not apply and, therefore, no reporting requirement under the Act exists with respect to this transaction.

Finally, we point out that although no definite plan has been formulated, it is possible that [redacted]

or other reasons. However, the probability of the occurrence of such an event can be accurately characterized as merely speculative at this time.

CONCLUSION

Because an irrevocable trust to which no reversionary interest is retained by the settlor is deemed to hold all assets and voting securities constituting the corpus of the trust, the interest [redacted]

We look forward to your concurrence in this conclusion.

Very truly yours,

[redacted]

[redacted]

[redacted]

2/14/94

[redacted] is our UPE. It does not meet size-of-person requirement