TO:

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RE:

Hart-Scott-Rodino Filing

DATED:

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As we discussed, certain shareholders (the "Shareholders") of our client propose to enter into a

qualify for the "investment exemption," a number of questions

price is not fixed when the merger agreement is signed (the

determinative. It is also our understanding that in this type of transaction. Imarkst raice is based on the lowest.

Transaction the period between Signing and Closing will likely exceed 45 days.

Scenario 1. At Signing, the "market price" of the Acquirer securities that a particular

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Signing and Closing, the stock price of the

decline occurs within 45 days prior to Closing, the Shareholder may consummate the Transaction

¹ Section 801(a)(ii).

This scenario assumes that no "investment exemption" is

increases prior to Closing, thus pushing the value back over \$15 million, the Shareholder may consummate the Transaction without regard to the waiting period. (C) In the event that either of the above situations results in the Shareholder's ability to consummate the Transaction without regard to the waiting period (because of a failure to meet the Size-

of the Armirar securities that a narticular

make a Hart-Scott filing. Between Signing and Closing, the Acquirer's stock price increases so that the value of the stock received by such Shareholder would exceed \$15 million. A) We believe that if this increase occurs on the 46th day prior to the Closing and continues until Closing, the Shareholder must make a With Sport filing; by The thin in the Closing is there a mechanism that an individual Shareholder making a "last-minute" filing can

sufficiently in that period so as to cause the "market price" to fall below \$15 million for only one day, the Shareholder may consummate

³ See Interpretation 117 of the Premerger Notification Practice Manual; Section 801.10(c)(1)(ii); pp. 5-35 through 5-37 of Axinn, Fogg.

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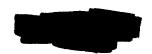
the Transaction without regard the waiting period.

Scenario 3. "Solely for the Purpose of Investment" Exemption. At Signing, a Shareholder who would otherwise have to make a Hart-Scott filing qualifies for an "investment

Acquirer, which subsidiary constitutes less than 10% of the total assets of the Acquirer; the Shareholder will not be a Board member of either the Acquirer or the subsidiary. The Acquirer, not the wholly owned subsidiary, is the issuer of the stock received by the Shareholder in the Transaction. A) We believe the Shareholder still qualifies for the "investment exemption." B) If not and a filling that he made is there a made in the state of the made in the state of the made is the state of the s

entire Transaction (i.e., placing the Acquirer shares in trust until expiration of the Shareholder's waiting period)?

If any of the above is not clear to you, or you would like additional facts, please do not hesitate to contact me at



⁶ See Interpretation 117 of the Premerger Notification Practice Manual; Section 801.10(c)(1)(ii); pp. 5-35 through 5-37 of Axinn, Fogg.

See Interpretation 37 of the Premerger Notification Practice Manual. Where the FTC measures the intention of the individual participate in the management of the issuer, not a subsidiary of the issuer that constituted less than 100 of the individual of the issuer that constituted less than 100 of the issuer than 100 of the i