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July 15 1994

BY HAND

Richard B. Smith, Esq.
Staff Attorney
Pre-Merger Notification Office
Federal Trade Commission
Sixth and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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FEDERAL TRADE COMMISSION
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Dear Dick:

This is to confirm our conversation in which you agreed with our conclusion that the transaction discussed below need not be reported under the Hart-Scott-Rodino Act.

Company A, a non-manufacturing company, wishes to acquire 100% of the stock of Company B, also a non-manufacturing entity. The

Hart-Scott-Rodino Antitrust Improvements Act provides that the size-of-person test for companies not engaged in manufacturing is

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Section 801.11(b) of the Federal Trade Commission's rules provides that the total assets of a person are those stated on the last regularly prepared balance sheet of the person, as long as the balance sheet was prepared within 15 months of the Hart-Scott-Rodino filing or consummation of the acquisition. 16 C.F.R. § 801.11(b) (2) and c(2) The balance sheet must have been prepared in accordance with "the accounting principles normally used by such person." 16 C.F.R. § 801.11(b) (2) The statement of basis and Purpose for the Hart-Scott-Rodino rules states that the Commission had considered requiring that financial statements be prepared in accordance with generally accepted accounting principles (GAAP) but in the final rule deleted those words. The final rule requires use of the accounting principles normally used by the company. 43 Fed. Reg. 33450, 33473 (1978)

Company B's year end statement is prepared in accordance with GAAP and its share assets totaling less than \$10 million. This most

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accounting principles Company B normally uses for its quarterly statements. The amount of total assets is less than \$10 Million. If the quarterly statement had been prepared in accordance with GAAP, the total assets would have been slightly in excess of \$10 Million. However, since rule 201.11 does not require that the

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the size-of-person test is not met by Company B and no filing need be made.

Should you disagree with the above, please notify me immediately.

Thank you very much.

Sincerely,

[Redacted Signature]

[Redacted]

CPA of She confirmed that Company B's

last financial statements prepared in accordance with GAAP

showed total assets of \$3,497,111. She

noted that the outside auditors used GAAP in their audit.

Such that you may accurately represent the same.

[Redacted]