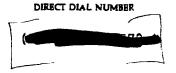






February 13, 1995



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VIA TELEFAX

Inde menorical maying ordered to the Mr. Patrick Sharpe Premerger Notification Office Federal Trade Commission 6th Street & Pennsylvania Avenue, N.W. Washington, D.C. 20580

Dear Mr. Sharpe:

As discussed in our calephone conversation on Friday, February 10, this letter outlines a proposed

ALL). HE WOULD APPLECTACE YOUR CONSTRETALION OF THE the acquiring person in the proposed transaction has total assets or annual net sales of \$100,000,000 or more for purposes of 15 U.S.C. § 18A(a)(2). The facts are as follows:

A limited liability company ("W") is considering purchasing the assets of X, a corporation not engaged in manufacturing. The purchase price for the assets will be in excess of \$15,000,000. The ultimate parent entity of X has total assets in excess of \$10,000,000.

("Z"). (He owns in excess of 50% of the equity in W). Z's bold principal asset is holdings of voting securities in a now publicly traded comparison ("Z") The ultimate parent entity of W is an individual publicly traded corporation (the "Company").

Other of Z's assets include his interests in his residential properties, as well as automobiles, boats and airplanes (collectively, the "Vehicles"). For liability and other reasons, the Vehicles are held by separate nomerians in which of in the only shareholder

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corporation solely owned by Z) for his personal use. Occasionally, however, the airplanes are leased to third parties or used by Z for business purposes. (Unlike the boats which are exclusively personal and on which Z does not take depreciation or other deductions. Z does determine the

of certain expenses related to the airplanes based on the ratio of business use to personal use. For 1994, the airplanes were used roughly 90% for Z's personal purposes and 10% for business use.

Z maintains at all times a current personal financial statement. The statement is kept "on line" in Z's computer system and (subject to security procedutions) may be

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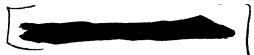
by Z and reflects all of his principal assets, including his personal residences and his interest in the Vehicle owning companies.

Z's assets are carried in the computer and listed in the financial statement at book value (acquisition cost). This includes Z's holdings in the Company. Z was one of the original shareholders of a predecessor of the Company and acquired his stock in the Company for a low initial price.

As reflected in his personal financial statement, Z's total book assets, including the residential property and Vehicles, exceed \$100,000,000. If the residential property and Vehicles (and other solely personal property) are excluded, however, his total book assets are below \$100,000,000. Z's total sales, moreover, including all income earned from his stock and other investment assets and including all income received from lessing of the aircraft

Using his regular financial statement as the base of information, Z has prepared financial statements in

statements in that they show the then-fair market value of Z's stock holdings in the Company. Fair market values are



Federal Trade Commission February 13, 1995 Page Three

taken from the <u>Wall Street Journal</u> and inserted in lieu of historical cost for the Company shares. Tax costs of sale are also reflected. The current fair market value of Z's holdings in the Company, when coupled with Z's other assets, and after adjustment for tax costs of sale, would show Z's assets in excess of \$100,000,000, even if the residential property and Vehicles are excluded.

We would also note that I had previously made an

he was deemed the ultimate parent entity of the Company, a fact that no longer is the case.

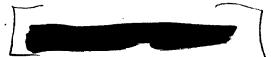
Paged on these facts we halieve that Z should not satisfy the \$100,000,000 size of person test. Our reasoning is as follows:

1. Z's regularly prepared financial statements are the financial statements that Z prepares and maintains for his own benefit, which he updates at the time of each acquisition. The financial statements prepared at the time of the borrowing are not "regularly prepared" in that they are prepared for purposes of a specific transaction (pamely)

only assets to be included are "investment assets, voting securities and other income-producing property." 16 C.F.R. § 801.11(d). This would exclude Z's personal residence as well as his personal Vehicles. The fact that Z includes

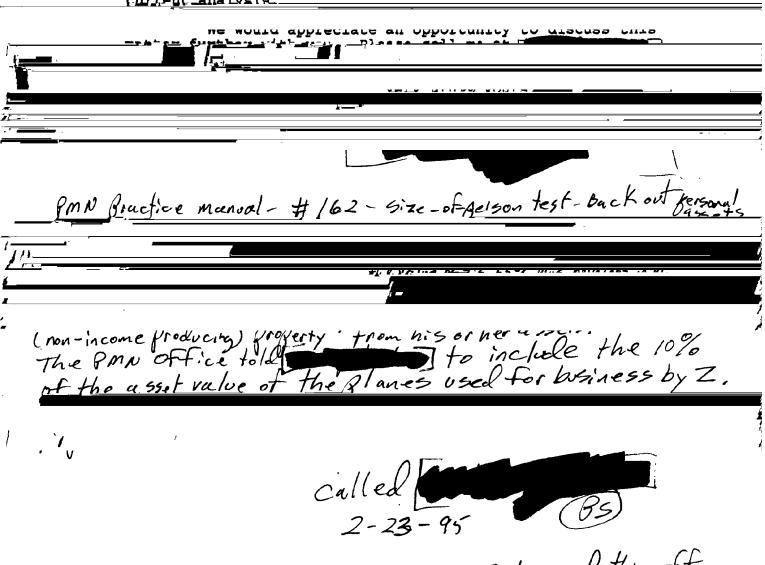
Moreover, the fact that Z chooses to hold these personal assets in a corporation (and thus, theoretically holds "voting securities") should not affect the principal characterization of the property as non-income producing. In addition, even if several of the airplanes are used to a limited extent for business purposes, no portion of such property should be classified as income producing for HSR Act purposes.

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Federal Trade Commission February 13, 1995 Page Four

3. We do not believe that Z's prior HSR Act filing using a fair market valuation of his stock holdings in the Company should preclude use of Z's current regularly prepared balance sheet showing assets at book value in the current analysis.



I bounced this off

responded.