

June , 1995

DRAFT

Patrick Sharpe, Esquire
Premerger Notification Office
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Sharpe:

This letter confirms our discussions over the last two weeks in which I outlined for you the following facts and you concurred in the following conclusions on the applicability to those facts of the Hart-Scott-Rodino Antitrust Improvements Act as summarized below.

1. Corporation A owns 100% of the common stock of

stock of E. A and its above-listed subsidiaries contemplate two related transactions with other corporations -- F, G and one of G's wholly-owned subsidiaries, H -- as described herein.

Exempt under 802.20

F has agreed, however, to be subject to the possibility of a future capital call that might thereupon result in F having contributed altogether capital in excess of \$15,000,000. F's Board of Directors has determined that the fair market value of the 20% of B's stock being acquired is less than \$15,000,000.

not needed RS

What are they? within control of holder RS

3. Transaction II will entail G's acquisition of a 15%

nonvoting upon its issuance but that is subject to conversion into

alternatively to D, E or a newly-formed wholly-owned subsidiary of C, D or E) of 100% of the common stock of G's wholly-owned subsidiary. H (or alternatively the principal asset of H as

undeveloped land; the only other assets held by H are assets related to that land (such as easements for utilities, access and

✓

FROM

address: governmental licenses, permits and approvals, such as "site

the purchase, sale and development of real estate. Concurrent with the acquisition, G and B will enter into a shareholders' agreement subject to the terms of which B, as majority shareholder of C, will appoint directors of C. Two of C's nominees to the Board there will be between nine and twelve directors on C's Board, including the two directors nominated by G. G's Board nominees will have no special approval rights regarding Board matters.

The result of these transactions would be (a) Mr

5. For purposes of this hypothetical, we asked you to assume that the size-of-persons test is met in connection with both Transaction I and Transaction II.

On the basis of the above-assumed facts, you concurred in the following conclusions:

wrong.
Event

1. Transaction I requires no HSR filing since the value of ^{it crosses} ~~the~~ _{the 15M}

2. The fact that a subsequent capital call may cause F's total capital contribution to exceed \$15 million would not make either Transaction I or the subsequent capital contribution reportable. If there is, however, a subsequent transaction between F and B involving the issuance of additional shares of F's common stock, the same as this subsequent transaction.

OK

3. Transaction II requires no HSR filing for the following two reasons. First, G is acquiring nonvoting securities. The right to elect the election of two directors is not an attribute of the securities being acquired, but rather a contractual arrangement between the parties. The fact that subsequent subject to a filing in connection with the initial acquisition of

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the nonvoting preferred stock; a filing will, however, be required

nine to twelve directors will be elected as G's nominees. Second, C's acquisition of the stock of H involves in essence the transfer of undeveloped land in the ordinary course of G's business and is accordingly exempt from filing under 16 C.F.R. § 802.1.

Thank you for your assistance in this regard.

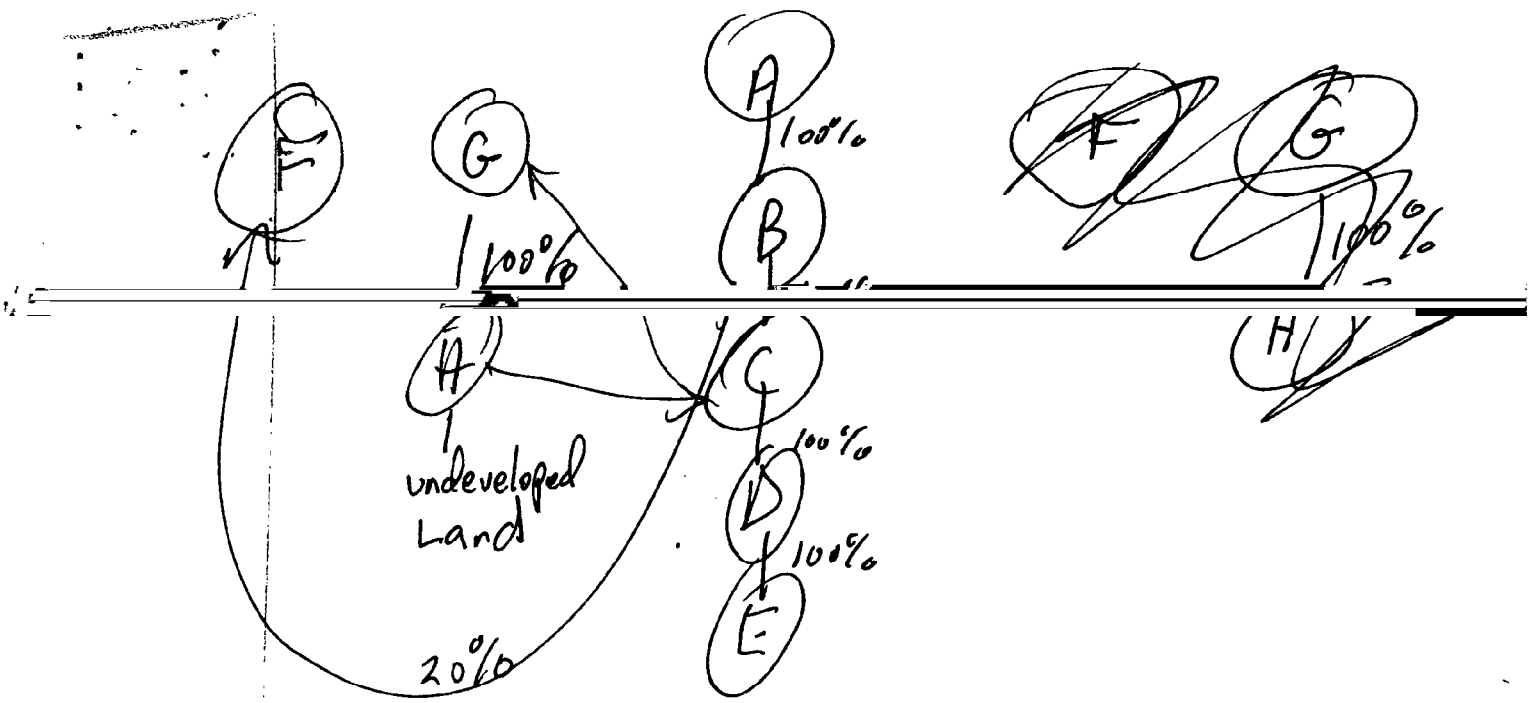
Sincerely,

[REDACTED]

called [REDACTED] 6-21-95
left voice mail. "I concur
with conclusions"

called again 6-26-95
Revised letter rec'd 6-27-95
left voice mail. I concur
with conclusions. Except #1
on page 2 is in error.
exception is noted in margin.

BS



Trans. I (F) 20% of (B) \$14.9 mm

Trans. II (G) 15% of (C) (non 1/3 of C)
 (A) 80% of (C)