801.40; 801.2(d)

October 10, 1995

BY TELECOPY

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Dear Dick:

This letter is to confirm our conversation on Friday regarding the applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") to

The parties, Companies A and B, will be jointly forming a new corporation, "NewCo." NewCo will consist of Company A and a subsidiary of Company B. The former shareholders of Company A will own approximately 50.1% of NewCo and Company B will own approximately ... We have attached "Before" and "After" diagrams to illustrate the effect of this transaction.

For reasons having nothing to do with the treatment of the transaction under the Act, the transaction is being carried out as follows. All of these steps will be carried out more or less simultaneously.

Initially, NewCo will be formed by Companies A and B. Company A will own 501 shares of NewCo and

owned subsidiary, "NewSub."

Company A will merge into NewSub with Company A as the surviving corporation. NewSub common stock

currently held by NewCo will be converted into New Company A common stock. Existing shares of Company A's common stock currently held by public shareholders will be converted into shares of New NewCo common stock equal to approximately 51.1% of the outstanding shares. Simultaneously, Company B will exchange shares of a wholly owned subsidiary, "BSub," for shares of New NewCo common stock equal to approximately 49.9% of the outstanding shares. The shares of NewCo stock previously issued to Companies A and B will be cancelled.

NewCo, under 16 C.F.R. § 801.40. Under such a characterization, Company B and each of the shareholders of Company A would be acquiring persons in the formation. Company B certainly would have to make an HSR filing as an acquiring person. We are not certain, but do not believe, that there are any shareholders in

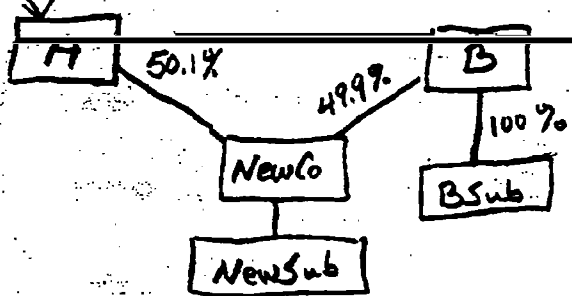
§ 18a(a)(3); or because they are entitled to one of the Act's exemptions, 15 U.S.C. § 18a(c). Treatment of the transaction as a merger or consolidation under 16 C.F.R. § 801.2(d) is inappropriate since Company B will

earliest convenience whether you agree with these

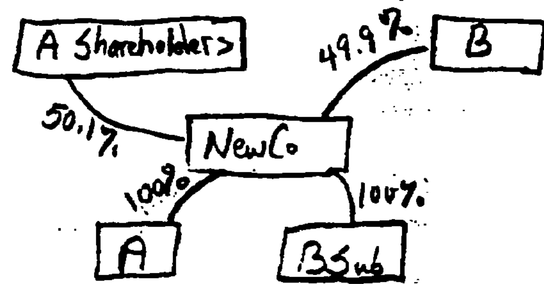
Very

10/11/95 Advised writer that filing as an 801.40 formation was appropriate in this fact setting. While Company A is being merged [illegible] Company B remains in existance as a contributor [illegible] NewCo.
RBSmith

Attachment



BEFORE



AFTER