801.13(b)(2); 801.14

[redacted]

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

Nov 15 11 46 AM '95

November 15, 1995

VIA FAX 202-326-2624

Dick Smith, Esq.
Room 303
Federal Trade Commission
Washington, D.C. 20580

Re: Hart-Scott-Rodino Filing

Dear Mr. Smith:

We represent "Subsidiary A", a wholly owned subsidiary of "Company A", in connection with a proposed acquisition of certain real estate (the "Real Estate Acquisition") by Subsidiary A from "Subsidiary B", a wholly owned [redacted]

[redacted]

of our telephone discussion on November 8, 1995 in which you indicated that [redacted]

Commission (the "FTC") and the Department of Justice ("DOJ") under the Hart-Scott-Rodino Act (the "Act").

Company A and Company B meet the minimum requirements of the "size of person" test for filing under the Act. However, during our telephone conversation, you preliminarily concluded that neither the Real Estate Acquisition nor the Securities Acquisition will meet the minimum requirements of the "size of

[redacted]

1. As mentioned above, Company A and Subsidiary A are represented by different counsel for their respective transactions.

[redacted]

rth the basic terms of the Real Estate Acquisition. As contemplated in the letter

of intent, Subsidiary A and Subsidiary B intend to enter into a definitive agreement which will more clearly delineate the rights and obligations of the parties regarding the Real Estate Acquisition.

3. Company A and Company B and the shareholders of Company B are negotiating the terms and conditions of the Securities Acquisition. Company A intends to enter into (i) an agreement with Company B for the purchase of [redacted] securities in Company B. Company A anticipates that once the Securities Acquisition is completed, Company A will [redacted] separate financing for the Securities Acquisition.

4. The total purchase price of the real estate to be acquired by Subsidiary A in the Real Estate Acquisition is estimated to be between $7 million and $10 million. Thus, neither the Real Estate Acquisition nor the Securities Acquisition standing alone meets the $15 million threshold under the "size of transaction" test.

5. The closing of the Securities Acquisition will be expressly contingent upon the prior closing of the Real Estate Acquisition, but the Real Estate Acquisition will not be contingent upon the closing of the Securities Acquisition. In other words, the Real Estate Acquisition may occur independently [redacted] Acquisition and the Securities Acquisition should not be treated as one transaction [redacted] Acquisition should not be aggregated. Since the value of such voting securities does not exceed $15 million [redacted]

[redacted]

PMN staff

Please confirm that the FTC considers the Real Estate Acquisition and the Securities Acquisition to be two distinct transactions and, accordingly, that Company A and Company B are not required to file a notification with the FTC and the DOJ under the Act.

You stated in our telephone conversation that the FTC does not [redacted] writing any of its decisions in [redacted]

[redacted] regarding this letter or the Real Estate Acquisition or the Securities Acquisition [redacted] Thank you for your courtesy and [redacted]

Very truly yours,

[redacted]

[redacted]

[redacted] advised under that two acquisitions appear to be separate transactions, assuming no 801.90 issues. Also advised that advice given is that of the PMN office only, and is not binding on the Commission or the DOJ. Rule 801.14 does not require the aggregation of separate transactions when a voting [illegible]

[redacted]

[redacted]