

FEDERAL TRADE COMMISSION
PREMERGER REVIEW
OFFICE

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February 8, 1996

VIA TELECOPY

Ms. Nancy Ovuka
Compliance Specialist
Federal Trade Commission
Sixth Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Ms. Ovuka:

This letter is to request confirmation of our telephone conversation yesterday in which you advised me that if a client of this firm purchases certain assets of another company in exchange for its publicly traded voting stock and prior to the closing of the acquisition the stock and a general bill of sale for the assets are placed in escrow, subject to distribution upon the closing after all preconditions contained in the purchase agreement are satisfied or waived, then even if the market value of the stock placed in escrow increases from less than \$15 million to in excess of \$15 million during each of the 45 calendar days preceding the closing, neither the buyer nor the seller would be obligated to file a Notification and Report Form for Certain Mergers and Acquisitions pursuant to the Hart-Scott-

assumed that the ultimate parent entity of each of Company A and Company B have net sales and/or total assets sufficient in amount to meet the "size-of-person" test established in section 7A(a)(2) of the Clayton Act. The stock of Company A is publicly traded and quoted on NASDAQ. At the time Company A and Company B enter

Company A will be obligated pursuant to the purchase agreement to deliver to Company B in exchange for its assets and to place in

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escrow is currently less than \$15 million. As a result, this transaction will not on the date the parties sign the purchase agreement and establish the escrow satisfy the "minimum size-of-transaction" test. Because the assets being acquired by Company A from Company B are utilized in a regulated industry, it is currently anticipated that more than 45 days may elapse before certain preconditions to closing contained in the purchase agreement requiring regulatory approval from various municipal, state and federal regulatory authorities are satisfied. It is possible that if the price of the Stock does not increase

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could cause the value of the Stock to exceed \$15 million

to file a premerger notification and report form even though none may ultimately be required. Placing the Stock and bill of sale into escrow, subject to release and distribution upon the satisfaction or waiver of the specific conditions contained in the purchase agreement, increases the likelihood of the transaction's consummation on the terms and for the consideration agreed to by the parties at the time the parties enter into the

reasonable efforts to obtain all necessary approvals from regulatory authorities in order to satisfy this condition precedent. In view of the foregoing, I request that you confirm that the consummation of the above transaction in the manner described above without filing a premerger notification and report form and the observance of the waiting period required by Section 7A of the Act will not violate the Clayton Act and that the Federal Trade Commission will take no action.

Very truly yours

[REDACTED]

[REDACTED]

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No! Escrow arrangement does not negate need for market price calculation pursuant to 801.10 and fair market value determination of the assets

RS CONCURS