

Rule 801.40

[REDACTED]

June 5, 1996

Via Facsimile

Ms. Alice M. Villavicencio
Federal Trade Commission
Response Notification Office

6th & Pennsylvania Avenue
Washington, DC 20580

Dear Ms. Villavicencio:

As we discussed yesterday, I have attached a chart demonstrating a transaction currently being contemplated by one of our clients. I believe the transaction is covered by

Rule 801.40.

will contribute significantly all of their holdings in Company A to NEWCO in exchange for shares in NEWCO. Company A is an ongoing business with revenues in excess of \$100 million. NEWCO is a newly created shell. The largest shareholder of Company A (identified in the chart as Shareholder #1, a natural person) holds 44% of the outstanding

The shareholders of Company B will likewise contribute significantly all of their holdings in Company B to NEWCO in exchange for NEWCO shares. Company B has in excess of \$10 million in assets and annual revenues. Company B's ultimate parent entity is

The remaining shareholders of Company A and Company B will contribute

size of the transaction test or both.

I understand that NEWCO will not need to make a filing as directed by Rule 802.41. Additionally, under Rule 801.40(a), the contributors to NEWCO will be deemed acquiring persons only, and NEWCO will be deemed the acquired person only. Based upon my analysis, the structure results in a single filing by Shareholder #1 in connection

[REDACTED]

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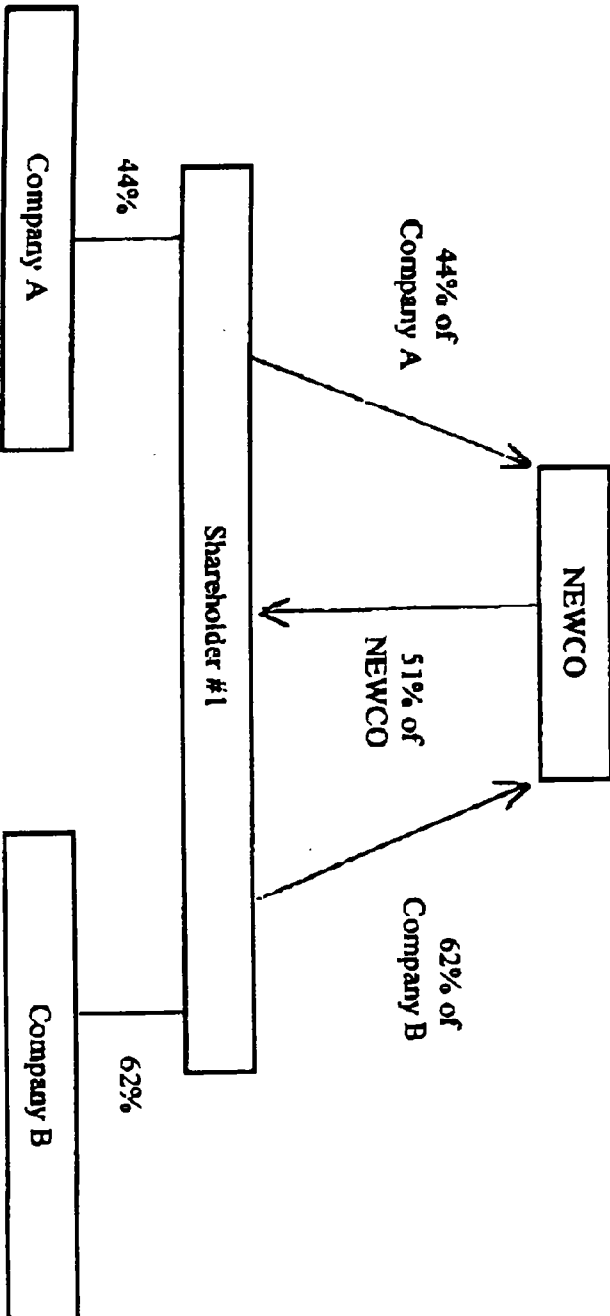
Ms. Alice M. Villavicencio
June 5, 1996
Page 2

with Shareholder #1's acquisition of approximately 51% of NEWCO. I cannot envision a filing by Company A under the structure since Company A will not be making any acquisition of NEWCO voting securities or assets.

Enclosure

June 5, 1996, Whiter was advised that Company (over 15M) is acquiring a reportable amount of voting stock of NEWCO will be required to file. Whiter was also instructed on how to report the contribution etc. on the HSR form. Whiter stated that Shareholder 1 meets the size-of-firm test and that the JV also meets the requirements of the Act as mentioned under Rule 801.40

and son



801.12

COMPANY XYZ

9 directors total

Common Stock:

11,000,000 outstanding
Entitled to elect 8 directors voting with all stock
1 vote per share

Series C Convertible Preferred:

Will be 325,000 shares outstanding after issuance, convertible into 3,250,000 shares of
Common Stock
Entitled to vote as a separate class to elect 1 director
Entitled to elect 8 directors voting with all stock
1 vote per share of Common Stock

Investor A will hold 300,000 shares of Series D Convertible Preferred (convertible into
3,000,000 shares of Common Stock)

CALCULATION

$$\begin{aligned}
 & + \\
 & [3,000,000 \text{ shrs held by Investor A} / 11,000,000 \text{ common stock outstanding} + 3,600 \text{ Series C} + \\
 & \quad 3,250,000 \text{ Series D total}] \times 8 \text{ directors} / 9 \text{ directors} \\
 & = 28.965\%
 \end{aligned}$$