

[REDACTED]

NOV 6 3 30 PM '96

November 6, 1996

**VIA COURIER**

Richard Smith  
Premier Notification Office  
Federal Trade Commission  
601 Pennsylvania Ave., N.W.  
Washington, D.C. 20580

[REDACTED]

Dear Mr. Smith:

This is to confirm the content of our conversations today and on Monday, November 4, 1996, and to provide you with additional background information. I informed you that the corporation at issue has two shareholders ("shareholder A" and "shareholder B") and that those shareholders and the corporation are parties to a

shareholder agreement. Shareholder A...

[REDACTED]

On November 4, 1992, the corporation's Board of Directors authorized the

take actions to cause the corporation to have five directors and that the shareholders "shall take all actions necessary to ensure the election to the Board of Directors of" (1) one

and (2) two individuals "mutually selected" by shareholders A and B ("independent directors").

Currently, the corporation only has four directors because shareholder A and

that the Board's authorization of five directors and the shareholder agreement's provision concerning the number of directors are not devices to avoid the Antitrust Improvements Act of 1976's ("the Act") reporting requirements.

[REDACTED]

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You informed me that, under the Act, shareholder A is considered to control the corporation because it holds a majority of the corporation's voting stock. You stated that

independent directors for purposes of the Act. We agreed that shareholder B, therefore, does not control the corporation, as defined by 16 C.F.R. § 801.1(b), because shareholder B only has contractual power to appoint two of the corporation's five directors. You also stated that because the parties' actions concerning the number of the corporation's directors are not devices to avoid the Act's reporting requirements, the fact that the corporation currently only has four directors (and one vacancy) does not alter the analysis.

This letter supersedes my letter to you of November 5, 1996. Please contact me if any portion of my description of our conversations is inaccurate or the foregoing analysis is incorrect. I appreciate your assistance in this matter.

[Redacted signature]

11/14/96 [Redacted] In order to [Redacted]

is whether the person was authorized to be directors. If such were not the case, the board control might shift and if a new person came out would shift back. Due to the severe penalties for non-compliance (which may be based on who controls the corporation) the test is based on the number of

authorized directors and not the number of persons involved in the drafting of original 801.(b)(2). (This view was confirmed by discussions with [Redacted])  
RBSmith

[Redacted]

[Redacted]