801.40; 801.11(e)

[redacted]

May 19, 1998

[redacted]

VIA TELEFACSIMILE

Richard B. Smith, Esq.
[redacted]

Dear Mr. Smith:

Following our phone conversation yesterday, and in view of the facts recently learned and [redacted]

This transaction is in the nature of a leveraged buy-out in which two venture capital entities will join with a number of other investors and with the current management of an unincorporated [redacted] acquisition vehicle recently incorporated ("Newco").

Another entity ("Debt Fund") will provide subordinated debt financing to Newco and will receive market rate interest plus an "equity kicker" in the form of non-voting preferred stock. This [redacted] credit. The Bank will also purchase a small amount of voting stock of Newco.

None of the entities (except the Division) has or will have an ultimate parent entity, and none of the investors are affiliated with each other within the meaning of HSR.

Immediately prior to the closing of the proposed transactions, Newco will have no regularly [redacted] Division's assets.

[redacted]

[redacted]

Richard Smith, Esq.
May 19, 1998
Page 2

Specifically:

1. [redacted]

2. The other investors will (a) include two special purpose entities ("Investment Fund [redacted] investors, who will invest directly in the equity of Newco, and (c) the Bank.

3. The investors will enter into an agreement to purchase the voting securities of newly created Newco, from Newco.

4. Equity Fund I has gross assets greater than $10 million, but less than $100 million, as determined by its most recent regularly prepared balance sheet. Equity Fund II does not have gross assets or net sales greater than $10 million, as determined by its most recent regularly prepared balance sheet.

5. It is possible that more than one of the other investors will have gross assets exceeding $10 million, but, so far as we are aware, less than $100 million.

[redacted] exceeding $100 million.

7. Equity Fund I will contribute slightly less than $4 million in cash to Newco in exchange for less than 40% of its voting shares; Equity Fund II will contribute the difference between the amount that the Equity Fund I actually contributes and [redacted]

[redacted]

Richard Smith, Esq.

[redacted]

10. Neither of the Equity Funds, the Investment Funds, nor any of the other investors will acquire voting shares of Newco which have a value of more than $15 million ~~or more~~.

11. No individual or entity will own 50% or more of Newco's voting shares.

12. Debt Fund will lend $20 million to Newco at prevailing market interest rates, on a long term, subordinated basis. In connection with the loan, it will receive non-voting preferred stock which will be convertible into less than 50% of Newco's voting shares, with a value of less than $15 Million, but will not make a capital contribution, as such, to Newco.

13. In addition to its equity investment, the Bank will make a $10 million term loan to Newco, at prevailing interest rates and on a senior debt, long-term basis.

14. The Bank also will provide Newco with a revolving line of credit of $20 million at prevailing interest rates. $5 million of this revolving line of credit will be used as part [illegible]

entirety as of the date of the closing, but Newco does not intend to draw more than $7.5 million down on the closing (the $5 million for part of the purchase price and $2.5 million for acquisition fees and expenses). Newco is likely to draw down more [illegible]

15. In effect, on the closing, Newco will (a) receive about $10.75 million in equity contributions, (b) an additional $30 million in borrowed cash, plus (c) a contractual [illegible] which not more than $7.5 million will be drawn down at that time.

16. On the closing, Newco will use all of its equity capital ($10.75 million), all of its borrowed funds ($30 million) and $7.5 million of its line of credit, aggregating $48.25 million, to acquire the Division's assets and to pay acquisition fees and expenses, leaving it with the right to draw on the $12.5 million balance of the revolving credit line.

[redacted]

[redacted]

[redacted]

Based upon these facts, we would like your views on the following:

(a) [illegible]

(b) If so, by whom?

(c) Is the acquisition of the Division's assets by Newco subject to notification?

(d) If so, by whom?

Please accept my thanks in advance for your views on this matter. I am not looking for a formal opinion, but only your guidance, and will be happy to take it on the telephone.

Sincerely,

[redacted]

cc: [redacted]

5/20/98 To [illegible] Newco will be formed just before the acquisition. Since nobody controls ~~Newco~~ [illegible] and since nobody will take back voting stock of ~~[illegible]~~ and [illegible] Newco's formation is non-reportable (But Newco valued in excess of 15 MM, Debt Fund and Bank are loaning money to Newco (which would be included in its assets) but since loans are at prevailing market interest rates they would not affect the value of the voting stock going back) Newco also is able to use 801.11(e) for its purchase of the Division's assets, giving it ("Newco") no size. However, any subsequent asset purchases would require Newco to do a pro forma balance sheet to see if this (and other factors) made such transaction reportable.

[redacted]