

[REDACTED]

August 4, 2000

Alice M. Villavicencio
Premerger Office
Federal Trade Commission
Washington, DC 20580

REC'D
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580
AUG 10 11 30 AM '00

Dear Ms. Villavicencio:

Thank you for the assistance you have been giving me in connection with the proposed transaction that we have been discussing. You asked me to describe the transaction in writing for your further consideration:

Our client, Company A, is negotiating a transaction in which it will acquire 6 percent of the voting securities of Company B and simultaneously enter into a services and supply agreement with Company B. The services and supply agreement is an arms length agreement and will solely be a fee-for-service relationship. Company B is a private company that is

these investors will be larger than Company A and will be... [REDACTED]

for the purpose of investment." We believe that the exemption does apply - in our discussions,

All investors in Company B will have the same right to attend Board meetings to "observe" and to receive information concerning business developments at Company B. The type of information that would be supplied is similar to that that would be received by investors in a public company. Specifically, the stock subscription agreement that will be signed by all

[REDACTED]

will be entitled to receive all periodic reports and information packages that are provided to the Board (this right will end only if Company B's stock is sold to the public in a registered public offering).

deliberations of the Board concerning the services and supply agreement.

Based on the above description, I continue to believe that Company A is

Company H.

If you have any questions, please let me know. There is critical time sensitivity because the reorganization will be delayed. Therefore, we would like to resolve this issue as soon as

Sincerely,

8/6/99 Writer advises that observer might be asked by board "What is the agreement going to be?" Observer would respond

agreement. Writer repeats that observer (and company A) have no to become involved in basic business decision of Company B (the decision by B to enter into the supply agreement with H had been reached before the observation rights could enter into place). B has sought the "Observation and Information Rights" section of the agreement rather than A. Based on this info, I determined that s. 9 could be used. (Writer confirmed that A & B are not competitors.) R. B. Smith