801.10 802,20

Attorneys at Law

November 22, 1999

VIA FACSIMILE
Partick Sharpe
Compliance Specialist
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
Washington, D.C. 20580
Fax (201) 126-2624

PREMICIONE 100 A S 3 A S 3 A S 3 A S 3

Dear Mr. Sharpe:

I very much appreciate your time and assistance during the telephone conversations you, my colleague transactions under the HSR Acr. As we discussed, I am writing to confirm the substance of those conversations.

Facts 1

We discussed the following hypothetical.

The players: A, a public company, has a market capitalization of approximately \$20 million. C, a holding company, is the ultimate parent entity of B, which has a fair market value of approximately \$100 million. D is its own ultimate parent entity.

The transactions: Pursuant to written agreements, the following transactions will occur on the same day but, by the terms of those agreements, in the following order on that day:

- 1. A issues new voting sectnities to C, conferring upon C control of A. Prior to that issuance, C and A have made their premergor notification filings, and have observed the applicable waiting period, for this transaction under the HSR Act.
- 2. A issues to D new voting securities representing approximately 20% of A's total outstanding voting securities. (C still controls A).



eleph<u>on</u>é

Patrick Sharpe Page 2

market value of A.

November 22, 1999

- Dicancels a dobt that C has to D.
- A acquires all of the outstanding voting securities of B. 1 Intra-parse -

TOT PRIPAGE OF RETEINMENTS OF VARIE BY THE VORING SECRETARIA HE WAS SECRETARIAN OF WHILEFET'S ESSECTION. new shares to C and to D, may the parties use the value of A prior to consummation of A's acquisition of B, since pursuant to written agreements. A will not yet be deemed to have purchased B!

(the PMN office) | The first of th

- ME FMNO

As we discussed, Rule 801.10(a)(1) provides that the value of publicly traded voting securities

because A's total market capitalization is \$20 million regardless of whether A has 10 shares outstanding valued at \$2 million per share or 20 million shares each valued at \$1, and the issuance of the new shares will simply dilute all of A's existing shareholders, not increase the

Accordingly, because D is acquiring voting securities having a value of approximately \$4 million.

securities transaction) or voting securities which confer control of an issuer which, regether with

my jue



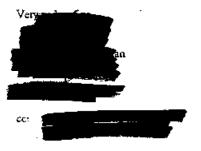
Patrick Sharpe Page 3

November 22, 1999

all enrities which it controls, has annual net sales or total assets of \$25 million or more (D's 20% holdings would not confer control).

I hope that this letter accurately summarizes the advice we discussed earlier today. If any portion of the above summary is inaccurate, please let me know.

Thank you again for your time and help.



I concur with this letter.



