[redacted] [redacted]

P. 001

801.10
802.20

[redacted]

Attorneys at Law

[redacted]

November 22, 1999

VIA FACSIMILE
Patrick Sharpe
Compliance Specialist
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
Washington, D.C. 20580
Fax (202) 326-2624

1999 NOV 23 A 8: 38

FEDERAL TRADE COMMISSION PREMERGER NOTIFICATION OFFICE

[redacted] [illegible]

Dear Mr. Sharpe:

I very much appreciate your time and assistance during the telephone conversations you, my colleague [redacted], and I had today concerning the ordering of roughly simultaneous transactions under the HSR Act. As we discussed, I am writing to confirm the substance of those conversations.

Facts

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 securities to C, conferring upon C control of A. Prior to that issuance, C and A have made their premerger 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).

[redacted] Telephone [redacted]

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3. D cancels a debt that C has to D.

4. A acquires all of the outstanding voting securities of B. / Intra-person

Issue

[redacted]

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)

A: Yes. You advised that the FTC will treat the transactions as having occurred in the order

[redacted]

the PMNO

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

[redacted]

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 market value of A.

Accordingly, because D is acquiring voting securities having a value of approximately $4 million, (ok if that is

[redacted]

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

[redacted]

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all entities 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.

Very [redacted]

I concur with this letter.

PS

cc: [redacted]