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May 20, 1986

Wayne E. Kaplan, Esq.
Federal Trade Commission
6th & Pennsylvania Ave., N.W.
Room 301
Washington, D.C. 20580

Dear Mr. Kaplan:

This letter will confirm our conversation of May 20, 1986 during which you, [redacted] and I discussed the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 in relation to a proposed leveraged buyout transaction. The elements of the proposed transaction (including some matters of detail which we did not discuss) are as follows:

1. Newco, a newly organized corporation, proposes to purchase from Seller all of the outstanding shares of Oldco, a wholly-owned subsidiary of Seller. Oldco has annual net sales in excess of $100,000,000. Newco's assets, less amounts paid to Seller, will be less than $10,000,000. The size-of-the-transaction test will be met.

2. The purchase price will be paid from investments in Newco, borrowings against the assets of Oldco, and Oldco's promissory note in favor of Seller.

3. The current officers of Oldco will be retained following the acquisition. Newco has no regularly prepared financial statements.

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4. The investors in Newco will consist of individuals, including certain individuals who are current officers of Oldco, and institutional investors. The investors will purchase from Newco a combination of subordinated debt, non-voting preferred stock and Class C Common Stock with limited voting rights as described below. The individual investors will also purchase voting Common Stock in two classes.

5. Class A Common Stock will be held by current officers of Oldco and will constitute 20% of all outstanding Common Stock. Class B Common Stock will be held by another individual investor and will constitute 10% of all outstanding shares of Common Stock. The Class C Common Stock will be held by all investors and will constitute 70% of all outstanding Common Stock. Ten percent of the Class C Common Stock will be held by the individual investors and 90% will be held by the institutional investors. The Class A Common Stock and Class B Common Stock will each have the right to elect three directors. The Class A Common Stock and Class B Common Stock will each have 50% of the voting power for the election of a seventh director. Except as described below the Class C Common Stock will be non-voting. In the event of the declaration of a default under the Newco subordinated debt the holders of 60% of the Class C Common Stock would have the right to elect a majority of the Newco board. Approval of a majority of each class is required for amendments to Newco's charter documents. Approval of a merger or sale of assets will require the approval of 2/3 of the Common Stock voting as a single class. All classes of Common Stock will convert to common stock with equal voting rights in the event of a public offering, upon the payment of the subordinated debt in full or upon the election of the holders of 60% of the Class C common at least two years after the acquisition.

We understand from our conversation that filing would not be required under the circumstances described above. You advised that where no single investor has the right to elect a majority of the board of a newly formed acquiring entity, such entity is considered to be the ultimate acquiring entity. Under such facts the funds raised by the acquiring entity for the purpose of the acquisition are not counted for the purpose of applying the size-of-the-person test to the acquiring entity under the "pass through" principals followed by the staff and reflected in the proposed rules published in the Federal Register on September 24, 1985.

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We also understand that the right of the Class C Common Stock to elect a majority of the board of directors on default is not considered voting control for the purposes of the filing requirement. As noted above the Class C Common Stock would acquire full voting rights upon the occurance of certain future events, however, we do not anticipate that any investor would hold a majority of the voting shares at that time. Were an investor to have majority voting power upon conversion ~~we~~ understand that filing might be required at the time of conversion.

or otherwise obtain a reportable amount of VS, i.e., over $15 MM in value WEK

Please contact me if any of our understandings are incorrect. After our conversation we reviewed the transaction with the interested parties. The parties very much desire to close the transaction as early as May 29, 1986. I would therefore ask that any response you may have reach me by the close of business on May 28, 1986. I realize that this time frame is tighter than that we discussed and I apologize for the inconvenience to you.

Thank you very much for your assistance in this matter.

Very truly yours,

[redacted]

[redacted]

OK as amended
W. Kopla 5/21/86

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