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**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Tuesday, September 09, 2008 5:23 PM  
**To:** Verne, B. Michael  
**Subject:** Non-Obligation to File Premerger Notice

B. Michael Verne  
Premerger Notification office  
Bureau of Competition  
Federal Trade Commission  
7<sup>th</sup> & Pennsylvania Avenue NW  
Washington, DC 20580

**Re:** Hart-Scott-Rodino Treatment of Payment of Liabilities in connection with the acquisition of equity interests

Dear Mike:

In a follow up to our conversation on September 9, 2008, I have sent this letter to confirm our discussions that the parties involved in the transaction described below do not have an obligation to report the transaction under the Hart-Scott-Rodino Act, as amended (the "HSR Act").

In the proposed transaction, the Purchaser will purchase from the Sellers (i) all of the corporate shares and limited liability company interests in entities owning the business and from which the business will be operated after the purchase, and (ii) all of the limited partner interests and all general partner interests of a limited partnership which holds certain real estate used in the business. The total purchase price for the equity interests specified above to be paid by the Purchaser to the Sellers is approximately \$43 million.

As a part of the transaction and plans of the Purchaser, the Purchaser will pay off, to various third parties (which are generally unrelated banks), the \$30 million of existing debt of the various entities referred to above. As a result of the transaction, certain Sellers will be relieved of certain guaranty obligations upon the pay-off of these debts. However, with regard to the debts, because (i) the debts are all current, (ii) the respective entities have paid and have the ability to pay any and all obligations of the debts, (iii) the various debts are collateralized with real and personal property of the respective entities, and (iv) the value of the collateral securing the debts substantially exceeds the debts, the Sellers were never expected to incur any liability or make any payments on these guaranty obligations. Consequently, the value to the Sellers of the payoff of the debts is minimal or zero.

If in applying the size of transaction test, the total value of the transaction included the purchase price for the shares and interests purchased and the debt to be paid, the total amount would surpass the \$63.1 million threshold level for the size of transaction test.

You confirmed the following:

- a) This acquisition of corporate shares, limited liability company interests and the limited partnership interests is treated as a purchase of equity in such entities and, therefore, for HSR Act purposes, the existing debt and liabilities of the purchased entities, whether or

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not paid or directly assumed by the Purchaser, are not included in calculating the size of the transaction;

- b) Since the debt and liabilities are not counted for the size of the transaction test, the transactions described above are not reportable under the HSR Act due to the failure to meet the HSR size of the transaction test; and
- c) Because of the reasons set forth above in items (i) through (iv) above, the value of the Sellers' guaranties are minimal or zero and the release of those guaranties is not included in determining whether the size of the transaction test is met.

At your earliest convenience, please let me know if you agree with the above. Thank you for your time and assistance in working through the issues.

Sincerely,

[Redacted]

[Redacted]

AGREE  
BN  
9/10/08