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CONFIDENTIAL

October 31, 2008

[REDACTED]

802-9

VIA ELECTRONIC MAIL

B. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
7th & Pennsylvania Avenue, NW
Washington, DC 20580

Re: HSR Treatment of Put Arrangement

Dear Mike:

In follow-up to our conversation on October 28, 2008, I am writing to confirm my understanding of the applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act") to the proposed transaction described below.

Proposed Transaction

Acquiring Company is a hedge fund. As a part of one of its investments, it owns voting securities of Issuer. Please assume that this investment is "solely for the purpose of investment" under the HSR Act and related rules.

The hypothetical transaction relates to a possible acquisition by Acquiring Company as the acquiring person of additional voting securities of Issuer. There is a public exchange whereby "put" and "call" arrangements can be entered into. Acquiring Company intends to enter into a transaction whereby the party on the other side of the transaction will have the right whenever it elects, for a certain period of time, to "put" a certain number of shares of Issuer to Acquiring Company at an agreed upon price. The price that the shares are trading for at the time the put arrangement is entered into will be well above the put price. Accordingly, there is some likelihood that these shares will never actually be put to Acquiring Company. The most probable scenario when the put would be exercised would be if there were a substantial drop in the market value of the shares to a value below the put price. In return for Acquiring Company taking the risk of having to buy the shares of Issuer at a point when the price it must pay will be above the market price, Acquiring Company will receive a premium payment for each share it agrees to have put to it. Acquiring Company retains this premium payment regardless of whether the put expires without being exercised.

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If the put is exercised, Acquiring Company will still hold the shares of Issuer "solely for the purpose of investment" but will hold greater than 10% of the voting securities of Issuer, aggregating the shares it already holds with the shares to be acquired pursuant to the put. The HSR size of the transaction test and size of the parties test also will be met.

Conclusions

You confirmed that no HSR obligation would be triggered at the point of entering into the put agreement described above since Acquiring Company would not hold the shares of Issuer subject to the put unless and until the put is exercised. You also confirmed that an acquisition of additional shares of Issuer by Acquiring Company as a result of the exercise of the put would not be subject to the HSR Act (even though Acquiring Company temporarily would hold greater than 10% of the voting securities of Issuer) so long as within the same day Acquiring Company sells a sufficient number of shares of Issuer such that it again would hold 10% or less of the voting securities of Issuer and accordingly qualify for the exemption under 16 C.F.R. §802.9. I also understand that if based on the time of day when the put exercise closes it is not feasible for Acquiring Company to sell-off shares of Issuer that same day, Acquiring Company still will not be subject to the HSR Act so long as on the next business day on which the exchange is open where the shares of Issuer are traded Acquiring Company sells a sufficient number of shares of Issuer to reach a position where it again would hold 10% or less of the voting securities of Issuer. Further, I understand that it does not impact the conclusion whether Acquiring Company sells off shares it held from before the exercise of the put, shares it just acquired or some combination to get back to a holding of 10% or less of the voting securities of Issuer. Finally, I understood that HSR will not be triggered even if, following Acquiring Company's sell off of shares of Issuer to get back to a 10% or less holding of voting securities of Issuer, Acquiring Company will hold a greater percent of the voting securities of Issuer (but not above 10%) than it did before the put was exercised (i.e., it does not matter from an HSR perspective that Acquiring Company sells off fewer shares than acquired under the exercise of the put as long as the sell off results in Acquiring Company holding 10% or less of the shares of Issuer).

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

Sincerely,

[REDACTED]

AGREE
[Signature]
11/9/08

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