March 4, 1983

This material may be subject to the confidentiality provision of Section 7A(h) of the Clayton Act and exempt from disclosure under the Freedom of Information Act

Mr. Andrew Scanlon
Compliance Specialist
Premerger Notification Office, Room 303
Federal Trade Commission
7th Street and Pennsylvania Avenue, N.W.
Washington, D. C. 20580

Dear Mr. Scanlon:

As we discussed, I am writing to confirm our telephone conversations of February 25, 1983, in which you provided an informal opinion regarding the applicability of the premerger notification provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") to a contemplated leveraged buy-out of substantially all of the assets of a subsidiary corporation by a new corporation formed for the purpose.

More specifically, the transaction I described would involve the following: Company A is a diversified holding company with several subsidiaries and more than $100 million in assets and annual net sales. Certain officers of Company B, a wholly-owned subsidiary of Company A, have proposed to purchase substantially all the assets of Company B for a purchase price, consisting of cash and notes, of $15 million. To effect the purchase, the officers would form Company C, which would be the acquiring entity. Company C would be nominally capitalized and would obtain a commitment from a lending bank permitting the borrowing of approximately $12 million, which would be used for the cash portion of the purchase price. Simultaneously with the closing of the purchase by Company C of the assets of Company B, Company C would

(a) effect the borrowing under the loan commitment, (b) immediately pay over the amount borrowed to Company A in partial payment of the purchase price and (c) issue its notes to Company A in payment of the balance of the purchase price.

We note that prior to the consummation of the transaction, Company C would be without assets, except for its nominal capitalization and except to the extent that its contractual rights under the purchase agreement and loan commitment may be deemed assets. In addition, Company C would be wholly owned by the officers mentioned above and would not be an entity within any person meeting the jurisdictional requirements of the Act.

As noted above, at the time of closing Company C would receive, and immediately deliver to Company A, cash proceeds of its borrowing under the loan commitment in an amount greater than the jurisdictional amount set forth in Section 7A(a)(2) of the Act. However, it is our understanding that the Commission staff has determined that where the only significant assets of an acquiring company are the cash proceeds of a loan intended to finance the acquisition, which proceeds are received by and "passed through" the acquiring company simultaneously with the acquisition, the transaction is not likely to be of antitrust significance and the acquiring party will not be deemed to meet the "size-of-the-parties" test of Section 7A(a)(2) of the Act. Of course, following the consummation of the transaction, any further acquisition involving the acquiring party (none is presently contemplated) would have to be independently evaluated to determine the applicability of the Act.

Under the facts outlined above and on the basis of the foregoing analysis, you advised that the proposed transaction may be consummated without complying with the notification and waiting requirements of the Act.

We request that you notify us within two weeks of the date of this letter if the operative facts outlined above are inconsistent, in any material respect, with your recollection of our February 25 telephone discussions or if you disagree with either the conclusion arrived at or its underlying analysis.

Thank you again for your prompt assistance in this matter.