March 25, 1983

Dana Abrahamson, Esquire
Federal Trade Commission
Washington, D. C. 20580

Dear Mr. Abrahamson:

Confirming our telephone conversation of the last two weeks, the following planned transaction is not reportable under the Hart-Scott-Rodino Act.

[Redacted] is a wholly-owned subsidiary of [Redacted], an ultimate parent entity with sales and assets substantially in excess of $100 million. [Redacted] proposes to sell certain outlets to a newly-formed Delaware corporation, [Redacted], in a transaction which will substantially exceed $25 million (aggregating payment made and assumed liabilities). Ownership of [Redacted] will be as follows upon closing of the transaction:

[Redacted]: a natural person, will own 48% of the voting stock. [Redacted]: a natural person, will hold 12% of the voting stock. [Redacted] will have the contractual right to vote all stock held by this voting trust. He will thus own or control 60% of the voting stock. The remaining 40% of the voting stock will be owned by [Redacted]. [Redacted] will own all of the preferred stock of [Redacted]. Upon the happening of certain events of default, [Redacted] may be entitled to utilize rights stemming from this preferred stock to elect a majority of the directors of [Redacted]. [Redacted] would continue to have this right only until the default or defaults were cured.

Under these facts, [Redacted] and only [Redacted] is deemed the ultimate Parent of [Redacted]. Though [Redacted] may have the contractual right to elect a majority of the board of directors upon the happening of certain contingencies, it has no present right to do so. Neither
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nor holds business assets of $10 million or more. The
proposed sale of assets by to is not reportable because
ultimate parent, is not a $10 Million Person. This is
so even though expects to have unused lines of credit exceeding
$10 million after acquiring the assets from . The line of credit
test for determining a person’s size is an informal test which is used
by the Federal Trade Commission only when a newly-formed acquiring
corporation is its own ultimate parent.

Moreover, the formation of is not reportable. Though is
designed to be a Million Person, neither of the other contributors
to formation of -- and -- is a Million Person.
proposed lenders (which are Million Persons) will not receive
any stock of , and thus are not seen to be contributing to its for-
mation within the meaning of the Hart-Scott-Rodino Act.

cc: