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[REDACTED]

September 17, 1984

DELIVERED BY COURIER

Federal Trade Commission  
Premerger Notification Office  
Room 303  
Washington, D.C. 20580

Attention: Ms. Roberta Baruch

Re: Request for Interpretation Under Rule §803.30

Dear Ms. Baruch:

The purpose of this letter is to request an informal interpretation from the staff of the Premerger Notification Office of the Federal Trade Commission (the "FTC") that the notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") do not apply to the merger transaction discussed below. Our client

[REDACTED] is in the process of finalizing a Reorganization Agreement pursuant to which it will merge (the "Merger") with and into [REDACTED]

[REDACTED] The name of the surviving corporation (the "Surviving Corporation") will be [REDACTED] immediately after the Merger, the former shareholders of [REDACTED] will own 75% of the voting stock of the Surviving Corporation and the [REDACTED] shareholders prior to the Merger will own 25% of the voting stock of the Surviving Corporation.

Through its approximately 80% - owned indirect subsidiary, [REDACTED] owns the

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[REDACTED]

subject to

[REDACTED] For the year ended December 31, 1983, [REDACTED] reported total assets in excess of \$100,000,000. In addition, [REDACTED] also operates [REDACTED] hotels. Accordingly, [REDACTED] should be deemed to satisfy the Act's \$100,000,000 size-of-the-parties test.

[REDACTED] is presently a diversified company engaged in the manufacture of windows for the manufactured housing industry, the manufacture of dolls, the manufacture of quilted products, importing and distribution of kerosene heaters and direct-to-consumer installment sales of home furnishings and appliances. For the year ended [REDACTED] had total assets of approximately \$36,000,000 and total revenues of approximately \$58,000,000. However, prior to the proposed Merger, [REDACTED] will transfer to a newly formed, wholly-owned subsidiary [REDACTED] virtually all of its assets, except for its interest in a certain joint venture between [REDACTED] and [REDACTED] subsidiaries formed to own an interest in [REDACTED] (which has not yet become effective) and certain of the assets and related liabilities of a [REDACTED] subsidiary engaged in the direct-to-consumer sale of home furnishings. Also prior to the Merger, the stock of [REDACTED] will be distributed (the "Distribution") to each of the present [REDACTED] shareholders in a spin-off transaction. Thus, [REDACTED] Industrial will not be a part of the person of which [REDACTED] is the ultimate parent entity. Management of [REDACTED] has advised us that the book value of the assets (the "Remaining Assets") of [REDACTED] subsequent to the Distribution and prior to the Merger will be less than \$5,000,000.

While technically [REDACTED] is the Surviving Corporation in the Merger, the Surviving Corporation, called [REDACTED], will bear little resemblance to [REDACTED]. The principal assets of the Surviving Corporation will consist of stock of [REDACTED] a business engaged in direct-to-consumer sales, and the other assets of [REDACTED]. The directors and officers of [REDACTED] prior to the Merger will manage the affairs of the Surviving Corporation, and the management of [REDACTED] prior to the Merger will not be involved in the management of

the Surviving Corporation. In essence, regardless of the form of the transaction, we view the Merger as one in which [REDACTED] acquires [REDACTED] a company with assets having a book value of less than \$5,000,000 by issuing 25% of its stock to the shareholders of [REDACTED].

We respectfully submit that the proposed Merger fails to meet the size-of-the-parties test and therefore should not be subject to the notification and waiting period requirements of the Act. However, because of the novel situation presented, we hereby respectfully request your interpretative advice.

Pursuant to Rule §601.11(c)(2), the total assets of [REDACTED] shall be as stated on the "last regularly prepared balance sheet" of [REDACTED]. The FTC indicated, however, in the Statement of Basis and Purpose at p.3374 that "(i)f no statements of income and expense or balance sheet are regularly prepared, statements must be prepared if necessary to determine whether the Act applies." We respectfully submit that there will be no regularly prepared balance sheets of [REDACTED] following the Distribution and prior to the Merger. [REDACTED] balance sheet prepared prior to the Distribution, which principally reflects assets which will not be part of [REDACTED] subsequent to the Distribution and prior to the Merger, should have no relevance to the application of the Act. We believe that the FTC had this situation in mind when it set forth the above-quoted language. Accordingly, in the context of the Distribution and the Merger, the appropriate [REDACTED] financial statements on which to determine the size of [REDACTED] for purposes of the Act should be the pro forma balance sheet of [REDACTED] following the Distribution, which will be prepared in accordance with the requirements of the Securities and Exchange Commission.

In the alternative, if the FTC determines that [REDACTED] does have a "last regularly prepared balance sheet," we believe such balance sheet should be the last regularly prepared balance sheet of [REDACTED] prior to the Merger minus all assets other than the Remaining Assets.

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Our requested approach would comport with the policies of the Act - that acquisitions involving a small entity so as not to give rise to anti-competitive concerns should not be covered by the Act. In the context of the instant situation, we respectfully submit that the purposes of the Act are not served by ignoring reality and applying the Act to a merger with a small entity which does not give rise to anti-competitive concerns.

If you have any questions or require additional information, please feel free to contact [REDACTED] or the undersigned at the above-referenced number.

Thank you for your prompt attention to this matter.

Very truly yours,

[REDACTED]

[REDACTED]