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PREMERGER
NOTIFICATION
OFFICE

April 24, 1985

This material may be subject to the confidentiality provisions of Section 7A (b) of the Clayton Act which restricts release under the Freedom of Information Act

Mr. Wayne Kaplan
Room 301
Federal Trade Commission
Washington, D.C. 20580

Re: [REDACTED]

Dear Mr. Kaplan:

This letter is to confirm our telephone conversation of April 23 regarding an exemption from the premerger notification requirement under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("the Act").

We represent [REDACTED] a publicly held company, and its affiliated entities [REDACTED]

a general partnership. The following relationships exist among these various entities:

1. [REDACTED] is a wholly-owned subsidiary of [REDACTED]
2. [REDACTED] is the sole general partner of [REDACTED]; the limited partners are all outside investors.
3. [REDACTED] is a general partnership of which [REDACTED] and [REDACTED] are the partners; [REDACTED] is the managing partner.

[REDACTED] derives the bulk of its revenues from research performed under a contract with [REDACTED]. Under the terms of the joint venture agreement between [REDACTED] and [REDACTED], if any research performed pursuant to the [REDACTED] research

[REDACTED]

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contract has possible commercial applications, Ltd. is required to contribute the asset to [REDACTED] which is the entity marketing the research results.

Our clients propose to enter into the following transactions with [REDACTED] a publicly held company. [REDACTED] have agreed for [REDACTED] to purchase and [REDACTED] to issue and sell 1,000,000 shares of [REDACTED] s common stock at a purchase price of \$12.00 per share or an aggregate purchase price of \$12,000,000. Such shares will represent approximately 15.5% of the outstanding voting securities of [REDACTED] immediately after the issuance of the shares.

In addition, [REDACTED] have entered into a research and license agreement under which the [REDACTED] of [REDACTED] the "Licensee") and [REDACTED] the "Licensor") will jointly undertake a program of research and development, with the Licensee providing \$4,100,000 in research support to the Licensor over 24 months. Subject to the payment of this research support obligation and certain royalty obligations, the Licensor grants to the Licensee an exclusive world-wide license to make and sell all products related to [REDACTED] and certain other jointly developed products. The royalty obligations include payment of \$1,100,000 on the effective date of the agreement and \$300,000 six months thereafter, running royalty payments ranging from 7% to 10% of net sales, and several bonus royalty payments each ranging from \$100,000 to \$2,000,000, upon the occurrence of certain development events such as the initiation of clinical trials and government approval.

The parties have also agreed that to the extent [REDACTED] or its affiliates seek outside support of research on cardiovascular products, or for marketing of such products, [REDACTED] will first enter into good faith negotiations with [REDACTED] regarding such research support or marketing, as the case may be. In the event [REDACTED] research in cardiovascular products drops below a certain level, [REDACTED] is required to allow [REDACTED] a similar opportunity on alternative projects.

[REDACTED] and [REDACTED] concluded that if these transactions were aggregated, notification would be required under the Act because the total value would exceed \$15,000,000. Based on [REDACTED]

[REDACTED]

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my telephone conversation with you, however, I understand that it is the position of the Federal Trade Commission that a partnership cannot be an entity within a person but instead constitutes an ultimate parent entity itself and that aggregation is not required under these circumstances. The application of this interpretation to the transactions described above leads us to conclude that there are two separate transactions, one between [REDACTED] and another between [REDACTED]. Therefore, we understand your interpretation to mean that the requirements of the Act must be applied to each transaction separately.

Since the stock purchase transaction involves an acquisition price of \$12,000,000 and does not involve the acquisition of voting securities conferring control of [REDACTED] the transaction would be exempt from the requirements of the Act pursuant to Rule 802.20.

Unless you notify us by your close of business on May 2, 1985, that notification is required pursuant to the Act with respect to the stock purchase, the parties intend to complete the transaction on May 3, or as soon as possible thereafter, in reliance on your interpretation as set forth herein.

For the research and license agreement, as a separate transaction between [REDACTED] no filing would be required because the transaction does not satisfy either 7A(a)(3)(A) or 7A(a)(3)(B) unless the fair market value of the asset, or its acquisition price, as determined by the Board of Directors of [REDACTED] or its designee, is greater than \$15,000,000. Because of the nature of the asset and the contingent nature of the payments involved, neither the value nor the price of the asset can be determined with certainty.

In the event that the Board of Directors of [REDACTED] or its designee, determines that the fair market value or acquisition price of the asset is less than \$15,000,000, the closing may occur as early as seven days after such determination unless you notify us by your close of business May 2, 1985, that notification is required. If the Board determines that the value of the asset is in excess of \$15,000,000, then [REDACTED] will file the appropriate notification pursuant to the Act prior to completing this transaction.

[REDACTED]

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Please contact either [REDACTED] of this office or me at [REDACTED] (collect) as soon as possible if you have any questions or comments regarding the foregoing. If neither [REDACTED] nor I are available, you can contact [REDACTED] at [REDACTED] (collect).

Thank you for your prompt attention to this matter.

Sincerely,

[REDACTED]

cc:

[REDACTED]

[REDACTED]

P.S. Enclosed is a second copy of this letter. Kindly stamp it "received" and return it in the envelope provided for your convenience.