[redacted]

August 25, 1986

Dana Abrahamsen, Esq.
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: [redacted]

Dear Mr. Abrahamsen:

We are United States counsel to [redacted] company and a "foreign issuer" as defined in Section 801.1 of the Rules, Regulations, Statements and Interpretations (the "Rules") under the Hart-Scott-Rodino Antitrust Act of 1976 (hereinafter referred to as [redacted]. As such, we are endeavoring to determine whether the Federal Trade Commission (the "Commission") would concur with our view that [redacted] is not required to file a Notification and Report Form under Section 803.1(a) of the Rules in connection with the transaction described below.

On or about August 15, 1986, [redacted] company and a "Foreign Issuer" as defined in Section 801.1 of the Rules (hereinafter referred to as [redacted] announced its intention to acquire in the [redacted] of the outstanding capital stock of [redacted]

[redacted] owns a United States holding corporation ([redacted]) which, in turn, owns two United States

operating corporations; one operating corporation is organized in [redacted] and the other corporation is organized in [redacted] (collectively, the [redacted] Issuers"). The financial statements of the [redacted] are consolidated. The last regularly prepared balance sheet of the [redacted] United States Issuers reflects total assets of approximately $16.7 million. The sales of the United States Issuers for the most recently concluded fiscal period were less than $25 million. [redacted] does not own directly any assets in the United States, nor does it make direct sales in the United States, these activities being done through and by means of the [redacted] United States Issuers.

In addition to the foregoing, [redacted] is a general partner having a fifty percent capital position in a real estate partnership. Pursuant to Interpretations number 59 and 106 from the Premerger Notification Practice Manual published by the Antitrust Section of the American Bar Association, we do not believe that the total assets of the [redacted] Unites States Issuers would include the assets of the real estate partnership. Moreover, without reference to the Interpretations, pursuant to the structure of the partnership, we do not believe that [redacted] would be considered to "control" the partnership within the meaning of Section 801.1(b)(2) of the Rules because a supermajority vote of the capital of the partnership is required for partnership decisions.

Based upon the size of the [redacted] nited States Issuers (without inclusion of the partnership assets), either individually or on a consolidated basis, it is clear that the requirements of Section 802.51(b)(2) have been satisfied, i.e., neither the total assets nor the annual net sales of the [redacted] United States Issuers exceed $25 million. However, for an exemption from notification under Section 802.51(b), it appears that both subsections (b)(1) and (b)(2) are required to be satisfied. Section 802.51(b)(1) exempts [acquisitions of the stock of foreign issuers which do not confer control of] "[a]n issuer which holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person. . .) having an aggregate book value of $15 million or more,"

We have construed the provisions of Section 802.51(b) to apply to two types of foreign ownership of United States interests. A foreign issuer that owns directly assets in the United States would be governed by the provisions of Section 802.51(b)(1) and a foreign issuer that owns interests in the United States via a United States subsidiary would be governed by the provisions of Section 802.51(b)(2). In our view, while the

provisions of subsections (b)(1) and (b)(2) of Section 802.51 have been bifurcated, we believe that the only time that a foreign person would be required to satisty both subsections (b)(1) and (b)(2) of Section 802.51(b) would be if the foreign person were to both directly own assets in the United States and control a United States issuer. Since [redacted] does not directly own any assets in the United States (such ownership being through its wholly-owned subsidiaries), it is our view that it need only meet the requirements of Section 802.51(b)(2) of the Rules.

The effect of the foregoing construction is to disregard the form of the foreign transaction and, for purposes of premerger notification, to treat a foreign transaction as an "asset purchase" if the foreign person directly owns United States assets and a "stock purchase" if the foreign person owns United States subsidiaries.[1] Such a construction would be consistent with the reporting requirements for tender offers by United States issuers (see Section 802.20 of the Rules). We can see no rationale for a reporting requirement which treats foreign tender offers more restrictively than domestic tender offers.

In light of the urgency of the timing of this matter, please advise the undersigned as soon as possible if the Commission agrees that [redacted] is not required to file a premerger notice based upon the facts described above.

If you have any questions, please do not hesitate to call, collect, the undersigned at [redacted]. We appreciate your cooperation in this matter.

Very truly yours,

[redacted]

[redacted]

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1. The foregoing construction is consistent with Sections 801.90 and 802.1 of the Rules wherein, in certain instances, the form of the transaction can be recast to reflect the econic effect of transations.