



February 23, 1987

VIA TELECOPIER

Mr. John Sippel
Premerger Notification Office
Federal Trade Commission
6th Street and Pennsylvania Avenue N.W.
Room 303
Washington, D.C. 20580

Dear Mr. Sippel:

With reference to my letter to you of February 12, 1987, the purpose of this letter is to confirm the substance of our telephone conversation on February 20, 1987. The terms referred to below correspond to the terms used in the February 12 letter.

With regard to the formation of Acquiror, you were inclined to test the initial acquisition of shares of Acquiror by the two members of management under the joint venture rules contained in 16 C.F.R. section 801.40, and the subsequent private offering of shares of Acquiror under the non-joint venture rules generally applicable to acquisitions. Viewed this way, the acquisition by the two members of management of shares of Acquiror does not trigger the notification requirements of the statute because the Acquiror would not meet the size of person test contained in section 7A(a)(2). The subsequent private offering of shares of Acquiror would not trigger a notification requirement because all purchasers are exempt under 16 C.F.R. section 802.20 by virtue of the fact that none of the parties purchasing shares will purchase in excess of 5% of the voting securities of Acquiror and none will purchase in excess of \$15,000,000 worth of securities.

Even if the two phases of acquisition of Acquiror's securities were viewed as an integrated transaction, the same section 802.20 exemption would be applicable to all purchasers.

With respect to whether Acquiror meets the size of person test in connection with the acquisition by Acquiror of shares of the [REDACTED] Acquiror has no annual sales, and in the absence of a "last regularly prepared balance sheet", Acquiror's total assets are the present fair market value of Acquiror's assets. The only potential asset of Acquiror, other than the cash or cash equivalents used to purchase shares of [REDACTED] is a Line of Credit. You thought that the fair market value of the Line of Credit would be an asset of Acquiror, notwithstanding that proceeds of the Line of Credit will be downstreamed to Target Operating Company after the acquisition is consummated. However, based on my representation that the Line of Credit in fact has little or no fair market value, the Acquiror would not have \$10,000,000 of total assets and thus would not meet the size of person test of section 7A(a)(3).

Please let me know at your earliest convenience if this letter does not accurately reflect our conversation. My direct dial number is [REDACTED]. Once again, I appreciate very much all of your timely assistance in this matter.

Yours truly,

[REDACTED]

OK upon
later review
WE Kaplan
3/27/82

John.

a little complicated
but I believe the
letter is a correct
reflection of the
position of this office.

O.K.

Wayne
2/25/87