[redacted]

[redacted]

[redacted]

March 10, 1987

HAND DELIVER

Linda Heban, Esquire
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
Washington, D.C. 20580

Re: [redacted]

Dear Ms. Heban:

This letter will confirm certain amendments that the parties have made to the transaction described in the Antitrust Improvements Act Notification and Report Form and documentary attachments ("Report Form") filed by [redacted] with the Federal Trade Commission and the Antitrust Division of the Department of Justice on December 22, 1986. [redacted] was notified of the early termination of the waiting period with respect to this transaction prior to the end of that month.

As we discussed over the telephone yesterday, the proposed amendments to the transaction would, in effect, decrease the "holdings" of the [redacted] from those initially described in the Report Form. We are asking for your guidance as to (1) whether the amended transaction is exempt from the premerger notification regulations and (2) if not exempt, the actions that we need to take in order to amend the previously filed Report Form.

As you may recall, the Report Form indicated that [redacted] and [redacted] would form a new corporation, [redacted] Delaware for-profit stock corporation. [redacted] would each contribute $200,000 as capital to [redacted] in return for fifty (50) percent of the voting common stock of [redacted] The parties would then enter into a management agreement with [redacted] whereby [redacted] would provide management, administrative and support services to [redacted] The [redacted] would be the [redacted] of [redacted] and [redacted] This part of the transaction has remained unchanged. We concluded that the formation of [redacted] would not be

subject to the premerger notification requirements because the parties did not, and do not, contemplate that the assets of [redacted] would ever reach the minimum dollar amounts specified in 16 CFR §801.40(b).

It is the second part of the transaction described in the Report Form that has been amended. Initially, the parties contemplated that [redacted] would amend and restate their respective articles of incorporation, if necessary, and bylaws to provide that the directors of [redacted] would become voting "Members" of [redacted] The Members, in turn, would have had the right to elect the entire Boards of Directors of [redacted]

As we explained in our letter of December 22, 1986, which accompanyied the Report Form, we believed that this part of the original transaction was also exempt from the premerger notification regulations. Although state law expressly permitted the plans to have voting members, neither [redacted] could issue securities under their respective state statutes. We therefore concluded that the issuance of membership rights in such plans was not considered the issuance of voting securities under state law. Nevertheless, we took the legal precaution of filing the Report Form and analyzed the acquisition of membership rights in [redacted] and [redacted] as being analogous to the acquisition of voting securities in a for-profit stock corporation.

This part of the transaction has been changed. Under the amended proposal, each [redacted] will elect four (4) of its own directors to the Board of Directors of [redacted] In addition, each plan, by the mechanism of a bylaw change, will accept on its own Board the four (4) directors elected to the [redacted] Board by the other plan.

The practical effect of the above is as follows:

1. [redacted] will have nine (9) directors. Four (4) directors will be elected by each [redacted] plan. The [redacted] will serve as the ninth director.

2. [redacted] will have twenty-four (24) directors. Four (4) of these directors will be the directors elected to the [redacted]

3. Similarly, [redacted] will have nineteen (19) directors. Four (4) of these directors will be the directors elected to the [redacted]

[redacted]

In other words, there will be eight (8) interlocking directors between [redacted]

We do not believe that the premerger notification regulations cover the interlocking directorates described above. Under the amended proposal, each [redacted] plan merely recognizes in its bylaws the other plan's right to appoint four (4) directors to its Board, who will also serve on the [redacted] Board. We do not believe that such a right is equivalent to the acquisition of voting securities within the meaning of the premerger notification regulations.

We hope that you agree. If you do not, however, we hope that you will be able to advise us as to how to expedite any consideration of these changes by your agency and the Department of Justice. The Board of Directors of both [redacted] have approved the amended transaction and all requisite state regulatory approval has been obtained. My client, [redacted] hopes to adopt the necessary bylaws changes at a Board meeting scheduled for March 14, 1987.

Your assistance in this matter will be very much appreciated.

Best regards,

[redacted]

[redacted]

cc: [redacted]

3/11/87 Called [redacted] & told her not to re-file. L.A.H.