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March 12, 1987

This material may be subject to the jurisdiction of the Commission of the Federal Trade Commission under the Hart-Scott-Rodino Act

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FEDERAL TRADE COMMISSION
WASHINGTON, D.C.

Mr. Wayne Kaplan
Federal Trade Commission
Sixth Street & Pennsylvania Avenue Northwest
Washington, D.C. 20580

Dear Mr. Kaplan:

Confirming our telephone conversation on March 3, 1987, the following transaction is not subject to premerger reporting requirements under the Hart-Scott-Rodino Act (the "Act").

A newly-formed corporation ("Newco") will acquire substantially all of the assets of a corporation with sales in excess of \$100,000,000, for a purchase price which exceeds \$15,000,000. Newco will be its own "Ultimate Parent Entity" because no person or entity will directly or indirectly "Hold" 50% or more of its stock (quoted terms in this and following sentences are as defined in the Federal Trade Commission's Rules and Regulations implementing the Act). Because Newco has no regularly prepared balance sheet to use in valuing its "Size of Person," and because its initial capitalization other than monies to be used to buy the assets, will be less than \$10,000,000, it will not satisfy the Size of Person Test for the "Acquiring Person." Accordingly, even though other jurisdictional elements under the Act are met, the transaction will not be reportable.

Moreover, the formation of Newco will not be reportable under Section 801.40 of the Rules. The formers of Newco have contracted to contribute more than \$10,000,000 (but less than \$100,000,000) to its formation, and two entities which will receive stock in Newco have an Ultimate Parent Entity with assets exceeding \$100,00,000. However, these two entities are each 50% or more owned subsidiaries of the same Ultimate Parent Entity, and accordingly their respective acquisitions of stock in Newco (aggregating 37.5%) will be deemed to be acquisitions by the same "Acquiring Person." No other person or entity which will acquire stock in Newco is, or is controlled by, a person or entity with sales or assets of \$10,000,000 or more. Accordingly, even though other jurisdictional elements for reporting under Section 801.40 are present, the formation of Newco is not reportable.

Alternatively, the parties may decide to form a partnership as the acquisition vehicle to make the above-described acquisition. Section 801.40 does not apply to the formation of

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partnerships. The newly-formed partnership would be its own Ultimate Parent Entity and would fail the "Size of Person" Test for the same reasons as Newco fails to satisfy it. Accordingly, the transaction will also be non-reportable if accomplished through a partnership.

Per our past practice, please call me at your earliest convenience to confirm receipt of this letter and to advise me whether after seeing the written description of the transaction your opinion on reportability has changed.

Yours truly,

[REDACTED]

[REDACTED]

OK
WEK 3/17/87