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November 11, 1987

John M. Sipple, Jr., Esq.
Federal Trade Commission
Premerger Notification Office
Room 301
Washington, DC 20580

Re: Acquisition of Voting Securities of

Dear Mr. Sipple:

requests that the Federal Trade Commission ("FTC") investigate a potential violation of the Hart-Scott-Rodino Act ("H-S-R Act") in connection with the acquisition of, and proposed offer to purchase all outstanding shares of common stock by

On October 29, 1987, a Schedule 13D with the Securities and Exchange Commission disclosing their acquisition of 2,100,000 shares of stock valued in excess of \$91,000,000. (A copy of the Schedule 13D is attached as Annex 1 hereto.) had been acquired through open-market purchases made without reporting under the H-S-R Act. On November 2, 1987, filed a Schedule 14D-1 in connection with its offer to purchase all outstanding shares for more than \$1 billion (the "Tender Offer"). (A copy of the Schedule 14D-1 is attached as Annex 2 hereto).

The purchases and the Tender Offer were made newly formed

John M. Sipple, Jr., Esq.
November 11, 1987
Page Two

However, the sole general partners of [redacted] whose only business purpose is to act as general partner of [redacted]. Pursuant to the Agreement of Limited Partnership of [redacted] (the "Partnership Agreement") (attached as Exhibit 6 to the Schedule 13D), the general partners "exercise full and exclusive control over the business and affairs of the Partnership." (Partnership Agreement, Article IV, at 9-12.) Moreover, in the Schedule 13D, [redacted] discloses that "By virtue of his position as a general partner of the Partnership and as controlling person of [redacted] directly has the power to vote and to dispose or direct the disposition of the 2,100,000 shares held by the Partnership." (Schedule 13D, Item 5b, at 13.) Similarly, the Offer to Purchase, filed as an exhibit to the Schedule 14D-1, discloses that the "Partnership will be operated under the full and exclusive control of the General Partners, acting jointly or severally." (Offer to Purchase, Section 9, at 11.) In addition, [redacted] obtain the benefit of an increase in, and bear the risk of loss of, the value of the Singer shares purchased by Bilzerian Partners through their significant participation in the profits and losses of the partnership.* (Partnership Agreement, Article III, at 7-9.)

Under these circumstances, [redacted] believes that, for H-S-R Act purposes, [redacted] the "beneficial owner" of [redacted] shares held [redacted] and will be the beneficial owner of [redacted] shares acquired [redacted]

* Neither Schedule 13D nor 14D-1 filed [redacted] discloses the identity of the limited partners. Therefore [redacted] does not have sufficient [redacted] or [redacted] is a limited as well as a general partner. Other disclosure defects with respect to [redacted] proposed acquisition [redacted] are detailed [redacted] Counterclaims and Answer [redacted]

John M. Sipple, Jr., Esq.
November 11, 1987
Page Three

in the Tender Offer, irrespective of whether [REDACTED] is deemed to control the partnership. Under the H-S-R Act a person holds voting securities if that person is the beneficial owner of such securities. (Rule Section 801.1(c).) As explained in the Statement of Basis and Purpose accompanying Rule Section 801.1(c):

The rules do not contain a definition of 'beneficial ownership.' Instead, the existence of beneficial ownership is to be determined in the context of particular cases with reference to the person or persons that enjoy the indicia of beneficial ownership, which include the right to obtain the benefit of any increase in value or dividends, the risk of loss of value, the right to vote the stock or to determine who may vote the stock, the investment discretion (including the power to dispose of the stock).

(43 Fed. Reg. 33,450, 33,458 (July 31, 1978).)

As general partners, [REDACTED] possess all of the indicia of beneficial ownership of the [REDACTED]

[REDACTED] reported purchases of [REDACTED] shares and its stated intention not to file premerger notification in connection with the Tender Offer (Offer to Purchase, Section 15, at 29) raise serious questions under the H-S-R Act. Under the H-S-R Act [REDACTED] had he acquired the [REDACTED] shares or made the Tender Offer directly, would not have been able to purchase more than \$15,000,000 of such shares without first giving notice and observing the applicable H-S-R Act waiting periods. Through the use of [REDACTED] however, [REDACTED] but complying with the H-S-R Act has already obtained the right to vote and dispose of over \$91,000,000 [REDACTED]

* The FTC has previously applied the principle of beneficial ownership independent of the concept of control in challenging the use of the put-call arrangements. (FTC News, December 23, 1986, "FTC Bureau Director Warns of Premerger Act Violations.")

John M. Sipple, Jr., Esq.
November 11, 1987
Page Four

securities and the right to share significantly in the increase in value of the [REDACTED] that will result from [REDACTED] exercise of the investment discretion he has regarding the shares.*

The partnership's accumulation of this sizeable block [REDACTED] voting securities provided [REDACTED] with a springboard to launch the Tender Offer, a decision that was exclusively his as general partner [REDACTED] (Partnership Agreement, Article IV, at 9-10.) Through the Tender Offer [REDACTED] is proposing to acquire all of the outstanding shares of [REDACTED] without complying with the H-S-R Act. Some analysts believe "that [REDACTED] aim was to elicit a higher bid, enabling him to make a big profit on the 9.99 percent he already owns." [REDACTED] Otherwise, if the Tender Offer is successful [REDACTED] unilaterally, will be in a position to accomplish a merger [REDACTED] and dispose of a substantial portion [REDACTED]. (Offer to Purchase, Section 12, at 22-25).

Therefore, [REDACTED] has already violated the H-S-R Act by acquiring beneficial ownership of more than \$15,000,000 of [REDACTED] voting securities in nonexempt transactions. [REDACTED] will continue to violate the H-S-R Act if he is permitted to acquire beneficial ownership of [REDACTED] shares through the unreported Tender Offer. In both of the above situations [REDACTED] acquisition of beneficial ownership [REDACTED] securities is in

* Prior [REDACTED] filing of the Schedule 13D on October [REDACTED] were trading at \$32.25 [REDACTED]

** On November 2, the day the Tender Offer was announced [REDACTED]

John M. Sipple, Jr., Esq.
November 11, 1987
Page Five

contravention of the H-S-R Act independent of whether he controls [REDACTED]. (Rule Section 801.1(c).)

[REDACTED] activities must also be considered under Rule Section 801.90 pursuant to which the FTC has authority to challenge transactions entered into for the purpose of avoiding obligations under the H-S-R Act. The recent amendments to the Rules concerning acquisitions made by partnerships state that a partnership used as an avoidance device will be disregarded when, for example, "some persons might be tempted to make an acquisition through a partnership for the purpose of avoiding reporting or delaying their premerger notifications to the antitrust agencies until they were required by the federal securities laws to announce their acquisition publicly." (52 Fed. Reg. 20058, 20060 (May 29, 1987).)

In the instant case [REDACTED] appears to have [REDACTED] in the very way prohibited by the FTC. Through [REDACTED] was able to accumulate secretly the maximum amount [REDACTED] (i.e. 9.9%) before confronting the provisions of the federal securities laws and the New Jersey Shareholders Protection Act ("NJSPA") that imposes conditions on the purchaser of 10% or more of [REDACTED] shares without board of directors' approval. (See Schedule 13D, Item 4, at 7-13 and Offer to Purchase, Section 12, at 22-24 for a further discussion of [REDACTED].)

In addition, there appears to have been no business purpose for using [REDACTED] to acquire [REDACTED] shares or make the Tender Offer as [REDACTED] would appear to have been in a position to have done either directly. For example, [REDACTED] is personally involved in certain financing agreements associated with the Tender Offer. First, [REDACTED] are the sole general partners of a second partn[REDACTED]

[REDACTED] Pursuant to the terms of the Tender Offer, [REDACTED] has committed to provide \$150,000,000 of the financing for the Tender Offer. (Offer to Purchase, Section 10, at 19-20.) Combined with the equity investment made by [REDACTED] as the sole general partners of both partnerships are responsible for funding approximately 23%

John M. Sipple, Jr., Esq.
November 11, 1987
Page Six

of the total purchase price necessary for acquiring all of [redacted] voting securities. Second [redacted] personally, and [redacted] we entered into a commitment letter with National Westminster Bank USA ("NatWest") pursuant to which NatWest has committed to lend \$100,000,000 and obtain commitments for an additional \$440,000,000 in financing for the Tender Offer. [redacted] is personally obligated, along with [redacted] to fulfill the conditions of the commitment letter with NatWest. (Offer to Purchase, Section 10, at 13-16. [redacted] also has entered into a letter agreement with [redacted] pursuant to which a fee was paid to NatWest in connection with the signing of the commitment letter and which provides for additional fees to be paid to NatWest by [redacted] in connection with Tender Offer financing. (Offer to Purchase, Section 10, at 15.)

[redacted] significant personal involvement in connection with the Tender Offer financing suggests that he, rather than his partnership, is the real party in interest with respect to the acquisition of [redacted] voting securities. As such [redacted] use of interrelated partnerships to accomplish the acquisition of [redacted] calls into question whether [redacted] intent was to avoid complying with the obligations of the H-S-R Act.

[redacted] use [redacted] to acquire beneficial ownership of 9.9% [redacted] securities valued in excess of \$91,000,000 and to make the Tender Offer for all of [redacted] shares valued in excess of \$1 billion without reporting under the H-S-R Act cries out for FTC scrutiny. Thus [redacted] respectfully requests that the FTC investigate these purchases and the proposed Tender Offer.

If you have any questions or require any further information, please feel free to call me.

[redacted] Very truly yours,

cc: Senator Howard Metzenbaum