89.142

[redacted]

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December 14,

Victor Cohen, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Cohen:

Thank you for the informal interpretation you provided me today of certain of the rules (the "Rules") promulgated under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. The purpose of this letter is to confirm my understanding of your interpretation.

Your interpretation was provided in connection with the following hypothetical: Company "A" is contemplating making a potentially reportable acquisition. The securities of A are publicly traded and no person holds 50 percent or more of its outstanding voting securities.

Minority shareholders of A, "B" and "C", are party to a contract which provides, inter alia, that each has the power to designate 2 of the 6 directors of A. The contract additionally provides that the remaining 2 directors of A are to be chosen by the mutual agreement of B and C. As a consequence of this contract, B has the contractual power to veto C's choices for these remaining 2 directors, and C has the contractual power to veto B's choices for them; in sum, neither B nor C has a present unfettered contractual power to designate 50 percent or more of the directors of A.

Under these circumstances, neither B nor C "control" A within the meaning of Rule §801.1(b), and accordingly, A is the acquiring entity of the contemplated transaction both within the meaning of Rule §801.2(a) and for purposes of "the size of the parties" test under 15 U.S.C. §18a(a)(2).

Thank you for your assistance in this matter.

[redacted]

OK. W[redacted] 12/23/87