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801.40

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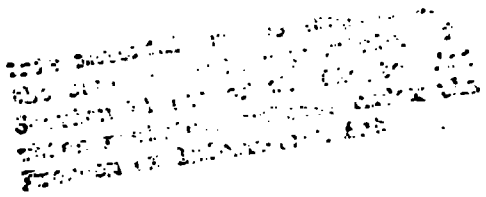
[redacted]

May 16, 1988

Mr. Patrick Sharpe
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
6th Street and Pennsylvania, NW
Washington, DC 20580



Dear Mr. Sharpe:

We represent a group of investors that are intending to jointly contribute certain monies to the formation of a joint venture. These monies will be used for the purchase of an existing business (the "Target Company"). We are in the process of presenting to the investors a number of possible alternatives in structuring the purchase of the Target Company and outlining the tax benefits and regulatory hurdles of each such alternative. The structure that has the most favorable tax advantages for the investors does not appear to be reviewed in the Rules promulgated by the Federal Trade Commission (Sections 801-803) (the "Rules"), pursuant to Section 7A(d) of the Clayton Act, 15 U.S.C. Section 18A(d), as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 Pub. L. No. 94-435, 90 Stat. 1390 (the "Act"). We request confirmation from your staff that the following formation of a corporation for the purchase of the Target Company does not require premerger notification pursuant to the Act by any of the parties to such transactions.

There are several steps in the formation of this joint venture and we will discuss each of them separately, setting forth in each instance why we believe premerger notification pursuant to the Act is not required.

(1) More than 10 investors (either as individuals, trusts, non-profit corporations or corporations) (the "Investors"),

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each with net sales or total assets (as defined in Section 801.11 of the Rules, hereinafter "Net Sales or Total Assets"), of less than $100 million, shall contribute an amount in cash totalling approximately $90 million (but in any case less than $100 million) to the formation of a corporation (the "Holding Company"). No investor in the Holding Company shall hold 10% or more (as the term "hold" is defined in Section 801.1(c) of the Rules) of the outstanding voting securities of the Holding Company.

The formation of this Holding Company we believe not to be a reportable event pursuant to Section 801.40(b)(1) or (2) of the Rules as neither the Holding Company nor any Investor has total assets of $100 million or more.

(2) Simultaneous with the formation of the Holding Company, as set forth above, the Holding Company shall purchase an existing business (the "New Company"), which does not have Net Sales or Total Assets of $10 million or more as shown on its last regularly prepared balance sheet.

We believe that purchase of New Company is not a reportable event pursuant to the Act for failure to meet the "size of person" test pursuant to Section 7A(a)(2) of the Act.

(3) Simultaneous with the formation of the Holding Company and the purchase of the New Company, each as set forth above, the New Company shall issue debentures to the Investors in the total amount of approximately $250 million.

We believe New Company's issuance of debentures does not affect our conclusions as set forth in items (1) and (2) above because proceeds from such issuances (i) are not assets of Holding Company under Section 801.40(c) of the Rules because they were not contributed or loaned to the Holding Company and (ii) are not assets of New Company pursuant to Section 801.11(c)(2) of the Rules as they are not reflected on the last regularly prepared balance sheet of New Company.

(4) Simultaneous with the (i) formation of the Holding Company, (ii) purchase of New Company and (iii) issuance of debentures of New Company (each as set forth above), Holding Company shall contribute the approximately $90 million cash (received from the Investors) to New Company, which shall, in turn, use such $90 million plus the $250 million (from issuing debentures as set forth above) as payment in full for the purchase of the Target Company.

As a result of the purchase of Target Company, the assets/debts of the various corporations can be summarized as follows:

(i) The Investors shall own 100% of the stock of Holding Company and $250 million in debentures from New Company;

(ii) The Holding Company shall own 100% of the stock of New Company;

(iii) New Company shall have Net Sales or Total Assets of less than $10 million as shown on New Company's last regularly prepared balance sheet, plus 100% of the stock of Target Company, for which it paid $330 million. } $10

(iv) The shareholder of Target Company shall receive $330 million in cash for its shares of Target Company.

We believe that the purchase of Target Company by Holding Company (as the Ultimate Parent of the New Company) is not reportable because Holding Company has assets of less than $10 million pursuant to Section 801.11(e) of the Rules and therefore fails to meet the size-of-person test pursuant to Section 7A(a)(2) of the Act.

This transaction has been structured to purchase the Target Company through three corporate layers (rather than one, as set forth in the example to Section 801.11(e) of the Rules) in order to take advantage of the significant tax benefits:

A) The Holding Company may establish other subsidiaries which will not be eligible for the tax advantages and benefits which accrue to the Target Company;

B) The New Company can hold the debt (debentures) without affecting, for accounting purposes, the operating ability of the Target Company; and

C) The New Company and the Target Company can file a consolidated income tax return which will offset the expenses related to the debentures from the income produced by the Target Company.

These tax benefits would not be available to the Investors should the Holding Company be the sole entity. We believe that the definition of "total assets" set forth in Section 801.11(e) was created to cover the series of transactions we propose in this letter.

Please confirm to us that our interpretation of the Act and the Rules is correct and that, based upon the assumptions set forth in this letter, none of events set forth in items 1-4 above are reportable.

Your prompt response would be greatly appreciated.

Sincerely,

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There are three separate transactions. For purposes of determining size of "Holding Company" according to Section 801.40 of the rules, Holding company is a $340.0 mm dollar person not a $90.0 mm dollar person and should be analyzed accordingly for the formation of Holding.

The second transaction is clearly exempt, the purchase of "New Company".

In the third transaction, Holding Company is at least a $10 mm person ($340.0 mm - $330 mm + Holdings of "New Company." (Note: Counsel indicated to me that this is a typo and that Holding company will pay $340.0 for Target company.

called [redacted] and informed him of errors in this letter 5-16-88 B.D. - checked with WK.