[redacted]

November 17, 1988

Wayne Kaplan, Esq.
Premerger Office
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Kaplan:

This is to confirm our telephone conversation today concerning the Hart-Scott-Rodino Act implications of the following structure.

[redacted] has a wholly-owned subsidiary, Sub A. [redacted] is also the 90% partner in Partnership (X is the 10% partner). Partnership has as its wholly-owned subsidiary Partnership Sub. It is now proposed that Sub A and Partnership Sub merge.

As I understood your advice, you stated that the merger of Sub A and Partnership Sub was not an exempt intraperson transaction under § 802.30 of the Rules because Parentco does not control Partnership Sub "by reason of holdings of voting securities." [redacted] is not deemed to control Partnership Sub "by reason of holdings of voting securities" because of the intervening partnership.

However, you noted that the "by reason of holdings of voting securities" limitation was absent from § 7A(c)(3) of the Act which exempts "acquisitions of voting securities of an issuer at least 50 percentum of the voting securities of which are owned by the acquiring person prior to such acquisition." You observed that the merger of Sub A and Partnership Sub is exempt under § 7A(c)(3). You indicated that "owned" in § 7A(c)(3) means "owned directly or indirectly." You pointed out that § 7A(c)(3) applies only to stock acquisitions, not asset deals. You cautioned that if a partnership set up a wholly-owned subsidiary for purposes of avoiding the strictures of § 802.30, that would likely violate the sham provisions of § 801.90. I pointed out that in the situation I am positing, Partnership Sub has been in existence for several years.

Please let me know if this letter accurately reflects your advice.

Many thanks for your assistance.

Sincerely,

[redacted]

[redacted]

O.K. Wayne Kaplan 11/17/88.