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April 4, 1989

[REDACTED]

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This material was prepared
the confidential
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which requires the
Freedom of Information Act

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OFFICE OF THE
ATTORNEY GENERAL

Mr. Jeffrey Kaplan
Federal Trade Commission
Premerger Notification Office
Bureau of Competition, Room 303
Washington, D.C. 20580

Dear Mr. Kaplan:

/ This will confirm our conversation today and your advice regarding application of the Premerger Rules to a proposed transaction.

Our Client may launch a tender offer for the outstanding voting securities of Target Co. The tender may be done directly by Client or by a newly formed subsidiary. (The formation of the subsidiary, which may or may not be wholly owned, would not in any event be subject to reporting.)

Client proposes to acquire Target's shares for an initial cash payment, with a subsequent contingent cash payment to be made roughly three years after closing of the acquisition. Payment of the additional cash will be contingent upon certain post-acquisition events, including the satisfaction of certain financial performance criteria by Target. Target's shareholders would not receive any notes to secure the contingent payment. As currently contemplated, their right to receive payment would be defined by the purchase agreement(s).

I concluded that, notwithstanding the contingent contractual right to a subsequent cash payment, this proposed transaction is a "cash tender offer" within the meaning of Rule 801.1(g)(1) and is not a "non-cash tender offer." Thus, this transaction would be subject to the fifteen day review period, not the thirty day review period. You agreed, noting that you had discussed the issue with your colleagues.

[REDACTED]

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We will rely upon this advice in connection with this acquisition. If you subsequently change your advice, please advise me immediately.

Sincerely,

[REDACTED]

[REDACTED]

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