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October 15, 1990

Marian Bruno Caviness, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th St. and Pennsylvania Ave. N.W.
Washington, D.C. 20580

Dear Ms. Bruno:

The purpose of this letter is to confirm the telephone conversation we had on Thursday, October 4, regarding the reportability of a certain transaction under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("the Act"), and Federal Trade Commission rules thereunder ("the Rules").

In our conversation, I described to you the following facts about the proposed transaction. The acquiring person will be acquiring certain shares of the Preferred Stock of an issuer from the current holder of those shares. The holders of Preferred Stock are not presently entitled to vote for directors. However, in the event the issuer fails to pay certain required dividends on the Preferred Stock or fails to meet certain mandatory redemption or purchase obligations in respect of the Preferred Stock (the "triggering events"), then the membership of the board of directors of the issuer will be increased by a certain number of directors who will be chosen by the holders of the Preferred Stock voting as a class.

Based on the above summary of the facts, I asked you the following question: if the holders of the Preferred Stock were to receive voting rights in the future upon the occurrence of the triggering events, would this constitute a "conversion"

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under the Act and Rules, giving rise to potential notification and reporting obligations?

You responded that there would be no conversion under the facts as described. You pointed out that Rule 801.1(f)(3) defines a conversion as "the exercise of a right inherent in the ownership or holding of particular voting securities to exchange such securities for securities which presently entitle the owner or holder to vote for directors of the issuer or of any entity included within the same person as the issuer." 16 C.F.R. § 801.1(f)(3). You stated that this definition of conversion requires that affirmative action be taken by the holders of the securities, and that this requirement is not fulfilled when the voting rights are acquired automatically because of actions of the issuer, as in the scenario described above.

We then discussed the Statement of Basis and Purpose issued by the FTC at the time Rule 801.1(f)(3) was amended in 1983. The language of the Rule that reads "the exercise of a right inherent in the ownership or holding of particular voting securities to exchange" was added to the original rule, which had read simply "the exchange." The FTC explained the reason for this amendment as follows:

The use of the word "exercise" in the definition is intended to distinguish conversion from the automatic maturation of an inchoate right, such as, for example, if preferred shares become entitled to vote because dividends are not paid.

48 Fed. Reg. 34427, 34429 (July 29, 1983) (emphasis added). The FTC thus expressly excluded from the definition of conversion the creation of voting rights based on the occurrence of events, like the triggering events in this case, which are automatic and do not involve affirmative action on the part of the holder. The occurrence of the triggering events and subsequent creation of voting rights in the Preferred Stock would not, therefore, constitute a potentially reportable conversion under the Act and Rules.

If you do not agree with the above summary of our conversation and your advice, I would appreciate it if you would notify me as soon as possible.

Thank you for your consideration of this matter.

Sincerely yours,
