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March 16, 1994

VIA TELECOPY

By Rubinstein, Esq.
Federal Trade Commission
Office of Pre-Merger Notification
Washington, D.C.

March 17 10 26 AM '94
FEDERAL TRADE COMMISSION

Dear Mr. Rubinstein:

As we discussed by telephone earlier today, we represent the buyer in an asset sale transaction in which the seller wants to close into escrow if early termination under the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") is not obtained by March 31, 1994. We plan to file Friday or Monday. We understand that closing into escrow is permissible under the HSR Act so long as beneficial ownership does not transfer to the buyer before termination of the applicable waiting period. We solicit your concurrence that the contract and its escrow provisions described below are sufficient to ensure that beneficial ownership will not be deemed to have passed prior to expiration of the waiting period.

The contract and escrow arrangement is structured as follows:

1. The purchase price will be paid at closing on March 31, 1994 or delivered into escrow if clearance under the HSR Act has not been obtained by this date. The same is true for the transaction documents.
2. All risk of loss after March 31, 1994 will be with the buyer even if the transaction closes into escrow, EXCEPT, all risk of loss after March 31, 1994 shall be borne by the seller if clearance under the HSR Act is not obtained, and all risk of loss after March 31, 1994 caused by the seller shall be

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borne by the seller, and in regard thereto,
the purchase price shall be reduced.

3. May 10, 1994 is the ultimate deadline for the transaction; if it does not close by that date, all rights to the assets revert back to the seller and the earnest money reverts to buyer.

It is our belief that under this structure, if clearance under the HSR Act is NOT obtained, the buyer never becomes the beneficial owner. However, as we discussed, if clearance under the HSR Act is obtained, then there is the possibility that buyer will bear the risk of loss prior to the actual time that HSR approval might be obtained. For example: Assume HSR clearance is not obtained by March 31, 1994. On April 1, the assets are destroyed but HSR clearance has not yet been obtained. On April 5, HSR clearance is obtained. While we understand that the buyer would receive the benefit of any insurance proceeds, the buyer would still be responsible for the April 1 loss. Would this result in the FTC determining that the buyer had beneficial ownership before termination of the waiting period?

Please note that the seller has requested the escrow arrangement in order to be able to record the sale in the first quarter of 1994. We understand that the seller's accountants have indicated that this will be permissible so long as the release from escrow occurs relatively quickly. Apparently, it is important to the seller's quarterly financial results to close this transaction, whether by escrow or otherwise, by March 31, 1994. If we can do so without jeopardizing our client, buyer, in any way under the HSR Act, we wish to accommodate the seller.

I greatly appreciate your prompt consideration of this issue. Please contact me at [REDACTED] should you have any questions.

Very truly yours,

[REDACTED]

*This escrow arrangement is ok.
RS concurs*

[REDACTED]