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December 20, 1994

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VIA FAX 202-326-2624

By David Rubenstein  
Staff Attorney  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C.

Dear Mr. Rubenstein:

Pursuant to our phone conversation of yesterday, set forth below are the fact situation and legal conclusions which I have reached and with which I request you concur.

We represent Company X. Company X is entering into a transaction with entity H. X and H are engaged in commerce, within the meaning of Section 7A(a)(1) of the Clayton Act. X has total assets valued at more than \$100,000,000 and H has total assets of more than \$10,000,000 within the meaning of Section 7A(a)(2)(C) of the Clayton Act. X has previously issued Warrants to H permitting H to acquire Common Stock of X, which, if exercised in circumstances other than in the below-described transaction, might require a notification filing pursuant to Section 7A of the Clayton Act.

The parties have agreed that the Warrants will be exchanged for non-voting preferred stock ("Non-Voting Stock"). H's tax counsel has recommended that the transaction be structured so that instead of directly exchanging the Warrants for Non-Voting Stock, H should first exercise the Warrants, momentarily acquire a certificate for the underlying Common Stock and then immediately exchange the Common Stock for the Non-Voting Stock.

The contract between X and H stipulates unequivocally that Common Stock issuable to H at the closing can only be utilized to be exchanged for Non-Voting Stock and cannot be used for any other purpose. If H were to attempt to obtain the Common Stock without consummating the transaction as required by the contract, the

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transaction would not be considered consummated under the contract, and H would have no entitlement to possession or ownership of the Common Stock. Any effort to circumvent the contract by H attempting to acquire and vote the Common Stock would be of no effect because of X's power to effectively vitiate the issuance of the Common Stock.

Under the circumstances, since the Common Stock issuable upon exercise of the Warrants can only be utilized to be exchanged for Non-Voting Stock and cannot be utilized for any other purpose, we have concluded that the Common Stock to be received by H will not be "voting stock" since it will not be able to be voted but will only have the right to be exchanged for the Non-Voting Stock.

Accordingly, we have determined that filing of a notification under Section 7A of the Clayton Act is not required to complete this transaction since H is not receiving "voting securities" as provided in the Act.

We request that you concur in this conclusion.

Sincerely yours,  
[REDACTED]

[REDACTED]