[redacted] [redacted] PS [redacted]

called Mr. Sullivan
Feb 14, 1984
I concurred
with letter
Patrick

February 8, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

This material may be subject to ... confidentiality provision of ... (h) of the Clayton Act ... release under the ... of Information Act

Premerger Notification Office
Bureau of Competition
Room 301
Federal Trade Commission
Sixth Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Acquisition of Shares of [redacted]

Dear Sirs:

We are writing to record the substance of a telephone conversation had today with Mr. Patrick Sharpe, one of your staff attorneys, in respect of the interpretation of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the regulations promulgated thereunder.

Our firm represents [redacted] who is the sole general partner of [redacted] a New York limited partnership formed in 1977 [redacted] and [redacted] Associates, L.P., a Delaware limited partnership formed [redacted] 1983 [redacted] and the controlling general partner of [redacted] a New York limited partnership formed in 1979 [redacted]

[redacted] and the three partnerships are engaged in a proxy contest for directorships on the Board of Directors of [redacted]

Prior to February 3, 1984, [redacted] owned 106,400 shares of the common stock, par value $.40 per share, of [redacted] (the "Common Stock"); [redacted] owned

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February 8, 1984
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332,300 shares of the Common Stock; and [redacted]wned 87,600 shares of the Common Stock. In the aggregate, the three partnerships owned 526,300 shares of the Common Stock, or approximately 7.4% of the 7,149,423 outstanding shares of the Common Stock. On February 3, 1984, [redacted] and [redacted]greed to the purchase, on the New York Stock Exchange, of an additional 240,000 shares and 140,000 shares, respectively, of the Common Stock, which purchase will settle on February 10, 1984. As a result of this purchase [redacted]ill own 572,300 shares of the Common Stock and [redacted]ill own 227,600 shares of the Common Stock. The three partnerships will own, in the aggregate, 906,300 shares of the Common Stock, or approximately 12.7% of the outstanding shares.

Based on the valuation procedures dictated by the regulations under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 16 C.F.R. §801.10, the value of the Common Stock held by each partnership as a result of the acquisition will be as follows: (1) [redacted]ill hold voting securities of [redacted]aving a value of $1,875,300.00; (b) [redacted]ill hold voting securities of [redacted] having a value of $11,376,787.50; and (c) [redacted] will hold voting securities of MAI having a value of $4,763,950.00 Although no single partnership will hold voting securities of [redacted]aving a value in excess of $15,000,000, in the aggregate the holdings of the partnerships will exceed such value.

Each of the three partnerships and [redacted] are members of a "group" for purposes of Section 13 of the Securities Exchange Act of 1934, as amended. Such a "group", however, is not deemed to be an "entity" under the regulations promulgated by the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. <u>See</u> 16 C.F.R. 801.1(a)(2); <u>see also</u> 48 F.R. 34427, 34428 (1983).

In order to determine whether [redacted] or the partnerships would be required to file a Notification and Report Form for Certain Mergers and Acquisitions in respect of the acquisition of the Common Stock by [redacted] I call Patrick Sharpe, a staff attorney with the Federal Trade Commission, on February 8, 1984. According to Mr. Sharpe, the Federal Trade Commission takes the informal position that a partnership is its own "ultimate parent entity"; so long as no single partnership exceeds the threshold established for reporting acquisitions of securities under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, no such report need be made. Based on Mr. Sharpe's advice, the holdings of the

CWK

This material may be subject to [illegible]

[redacted] [redacted] [redacted]

February 15, 1984

Wayne Kaplan, Esquire
Premerger Notification Office
Federal Trade Commission
Room 301
6th & Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Mr. Kaplan:

This letter will confirm the oral advice you provided to me over the telephone last Thursday and Friday, February 9 and 10. I outlined the following transaction:

A (a corporation with sales in excess of $100 million), B and C will form a new corporation, X, for the purpose of effecting a leveraged buyout, for approximately $17 million, of assets of D, a corporation with sales and assets in excess of $100 million. X will have assets substantially less than $10 million, apart from the funds to be used to pay the acquisition price. A, B and C will each hold one-third of the voting stock of X. A will manage the operations of X and, in the management contract, will receive the right to designate 50% of the members of the board of directors of X.

You indicated to me your opinion that: (1) A will not "control" X because, under 16 C.F.R. § 801.1(b), A will neither hold 50% or more of the voting stock of X, nor possess the contractual power to designate a majority of the members of X's board of directors; (2) X is therefore its own ultimate parent entity; and (3) therefore the transaction is not reportable because X does not meet the $10 million size of person test.

If the above does not accord with your advice, please telephone me immediately.

Very truly yours,

[redacted]