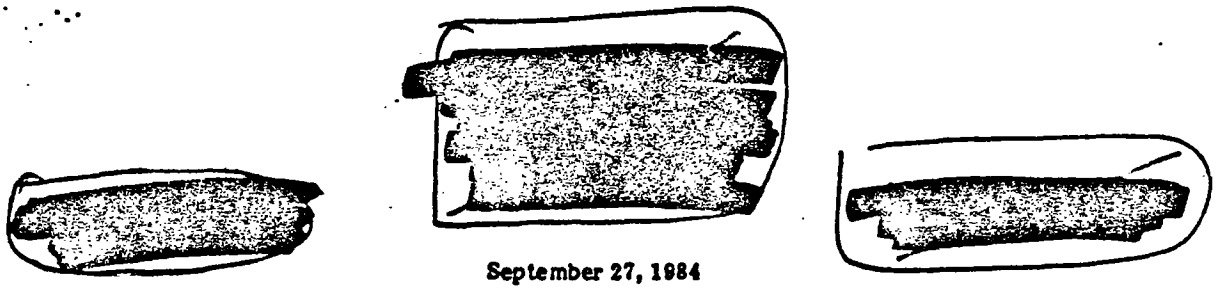

September 27, 1984

Mr. Dana Abrahamsen
Federal Trade Commission
Washington, D.C. 20580

In re: Confirmation of Informal Advice

Dear Mr. Abrahamsen:

Over the past several days we have discussed the application of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") and the rules promulgated thereunder (the "Rules") to the facts and issues set forth below. You have informally advised me of your agreement with the conclusions I have reached in interpreting the Rules, as set out under "Issues and Conclusions" below. The purpose of this letter is to request your formal confirmation, on behalf of the Federal Trade Commission (the "Commission"), of such conclusions. Terms set off by quotation marks in this letter, which are not otherwise defined herein, are used with the defined meaning therefor as set forth in the Rules.

FACTS

Mr. X and Mrs. X, each of whom are natural persons, established trusts (the "Trusts") under which their children are the sole beneficiaries. Mr. X was named the trustee of the Trusts. The trust agreements establishing the Trusts provide, among other things, that (i) Mr. X and Mrs. X (the "Settlors") have disclaimed any interest in the assets of the Trusts and have irrevocably renounced and surrendered any right to revoke, alter or amend the trust agreements, and (ii) if Mr. X fails or ceases to serve as trustee, specified persons will serve as successor trustees.

In connection with a proposed merger, shareholders of Corporation A (which will be the "acquired person" in the merger) will receive, in exchange for such voting securities, the voting securities of Corporation B (which will be the "acquiring person" in the merger). Mr. X currently owns voting securities of Corporation A. The Trusts, of which Mr. X is the trustee, also hold voting securities of Corporation A.

The "commerce" test set forth in Section 7A(a)(1) of the Act and the "size-of-transaction" test set forth in Section 7A(a)(2) of the Act are assumed, for purposes of this letter, to be satisfied with respect to the proposed merger. The "person" of which Mr. X is the ultimate parent entity will satisfy the "size-of-person" test set forth in Section 7A(a)(3) of the Act only if the Corporation B voting securities to be received by Mr. X for his own account and by the Trusts are aggregated for the purposes of making the calculations required under such test.

ISSUES AND CONCLUSIONS

(1) Does Mr. X, as one of the settlors of Trusts for his minor children, retain a reversionary interest in the corpus of the Trusts, and thereby "hold" voting securities constituting the corpus of the Trusts for purposes of Section 801.1(c)(4) of the Rules, where there is a remote possibility that under the applicable laws of descent and distribution Mr. X could inherit through a deceased child's estate property constituting the corpus of the Trusts?

No. Mr. X should not be considered to retain a reversionary interest in the corpus of the Trusts. The definition of "hold" in Section 801.1(c)(4) of the Rules provides that

> "the assets and voting securities constituting the corpus of a revocable trust or the corpus of an irrevocable trust in which the settlor(s) retain(s) a reversionary interest in the corpus shall be holdings of the settlor(s) of such trust."

The trust agreements provide that the Trusts are irrevocable. Also, there is no express provision in the trust agreements by which the Settlors have retained a reversionary interest in the corpus of the Trusts. Although Mr. X could conceivably inherit voting securities contained in the corpus of the Trusts through the laws of descent and distribution upon the death of a child who is a beneficiary under the Trusts, such a possibility should not be considered the type of express reversionary interest that appears to be contemplated by Section 801.1(c)(4) of the Rules. The statement in the preceding sentence is supported by Treasury Reg. Section 20.2037-1(c)(2), which provides that the possibility of inheritance is not a reversionary interest for federal estate tax purposes. Mr. X would therefor not appear to "hold" voting securities included in the corpus of the Trusts.

(2) Does Mr. X, in his capacity of trustee of the Trusts, "control" the Trusts (so that the Trusts are included in the "person" of which Mr. X is the "ultimate parent entity") where the trust agreements name the initial trustee and the successor trustees?

No. The trustee should not be considered to "control" the Trusts or the corpus of the Trusts. Under the Rules, an entity is included within a "person" only if it is an entity that the ultimate parent entity "controls" directly or indirectly. The definition of "control" in Section 801.1(b)(2) of the Rules refers to "having the contractual power presently to designate a majority of the directors of the corporation or, in the case of an unincorporated entity, of individuals exercising similar functions." Mr. X is presently a trustee of the Trusts, but has no contractual power to designate successor trustees since all such successors are provided for in the trust agreement itself. Under the express terms of the cited Rule, he would not, therefore, "control" the Trusts. It would appear that under the framework established by the Rules, a trustee's relationship to a trust is covered in the definition of "hold." The example to Section 801.1(c)(3) of the Rules makes clear that the trust, not the trustee, "holds" voting securities constituting the corpus of the trust. The logical inference is that where a trustee does not "hold," he does not "control," unless the trustee has the separate contractual power to designate successor trustees. Because Mr. X does not

have the power to name successor trustees, the Trusts would not be "controlled" by Mr. X, and the Trusts would not be included in the "person" in which Mr. X is the ultimate parent entity.

SUMMARY CONCLUSION

Based upon my interpretation of the Rules as set out under "Issues and Conclusions" above, I conclude that (i) Mr. X would not "hold" the voting securities included in the corpus of the Trusts, and (ii) Mr. X would not "control" such Trusts, so that the Trusts would not have to be included in the "person" of which Mr. X is the ultimate parent entity. As a result, Mr. X would not have to aggregate his holdings of Corporation B voting securities with the Corporation B voting securities held by the Trusts in determining whether he satisfies the "size-of-person" test set forth in Section 7A(a)(3) of the Act.

Please confirm, based upon the facts repeated in this letter, that the Commission agrees with the "Summary Conclusion" stated above and that I can rely upon such agreement in making all determinations based thereupon under the Act and the Rules.

Very truly yours,