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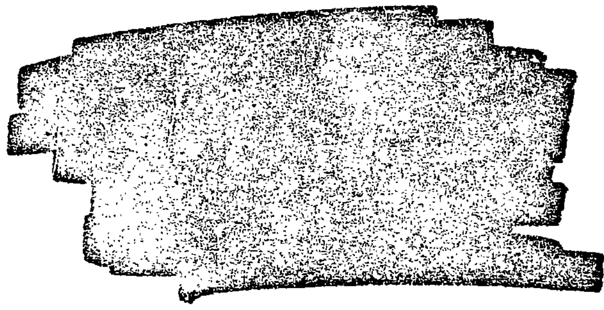
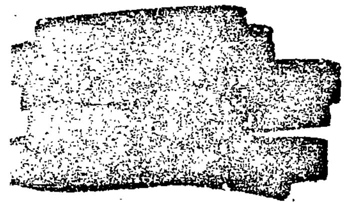
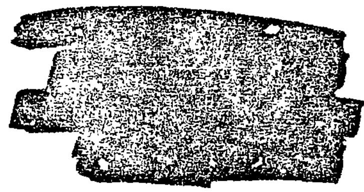






October 11, 1985

This [illegible] to [illegible] the [illegible] Section 7A(h) of the Clayton Act which restricts [illegible] under the Freedom of Information Act

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Patrick Sharpe
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
6th and Pennsylvania
Washington, D.C. 20580

Dear Mr. Sharpe:

As Andy Scanlon was planning to be out of your office for the next several weeks, he suggested that I write to you confirming a conversation between him and me on Wednesday afternoon during which he indicated that we would not need to file a Premerger Notification Form based on the following facts.

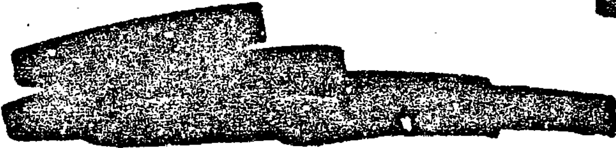
We represent a publicly held company several of whose major shareholders and executives are considering taking private (the "Target"). The structure of such transaction as presently contemplated would involve the formation of a holding company (the "Parent") the capital stock of which would be issued to such shareholders and executives in exchange for approximately $100,000 cash and $17,000,000 of Target capital stock. Such consideration would constitute substantially all of the initial assets of the Parent. After making arrangements for the financing of the transaction, a wholly owned subsidiary of the Parent (the "Subsidiary") would commence a tender offer for all of the remaining shares of common stock of the Target. Upon consummation of the tender offer, the Subsidiary would be merged into the Target and all shares of the capital stock of the Target would be extinguished. These steps would result in the Target becoming a wholly owned subsidiary of the Parent.

We understand that the Federal Trade Commission ("FTC") has indicated informally that in determining the

size of a newly formed acquisition vehicle which has no regularly prepared financial statements, it will look to the amount by which the corporation's assets at the time that it makes the acquisition exceeds the cash or cash equivalents necessary to accomplish the acquisition. In the case at hand, we do not expect the total assets of the Parent to exceed by $10,000,000 the assets necessary to accomplish the acquisition, such total assets to consist primarily of cash to be used to purchase shares of the Target and shares of the Target contributed during the initial capitalization of the Parent. The shares contributed to the capitalization of the Parent, in our view, should not be considered non-acquisition assets since each share so contributed reduces the amount of cash necessary to purchase shares of the Target during the tender offer. This position is consistent with the FTC's proposed amendment to 16 C.F.R. §801.11 as published in the Federal Register on September 26, 1985 which appears to exclude from the definition of assets for purposes of the size-of-person test, "cash that will be used by the acquiring person as consideration in an acquisition of assets from, or voting securities issued by that acquired person...."

On the basis of both the facts as presented and our discussion, Mr. Scanlon indicated his belief that the Parent would not meet the Section 7A(a)(2) size-of-person test and therefore the transaction as described would not necessitate the filing of a Notification Form. Although we realize that such an indication is not a formal opinion of the FTC, we concur with his belief and accordingly do not at present intend to file such Notification should the transaction occur. Nevertheless, we would very much appreciate any further thoughts you might have concerning the fact situation as presented above. If you have any questions or need any further information, please do not hesitate to contact me.

Very truly yours,



I concur,
Patrick Sharpe
10-15-85