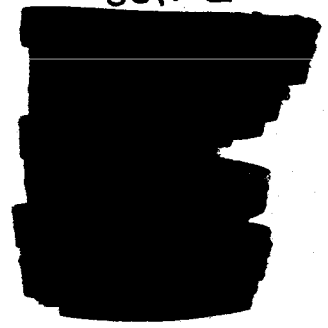
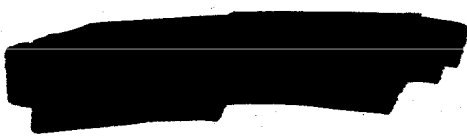


801.1 (b)
801.2



December 4, 2003

Via Messenger

B. Michael Verne
Federal Trade Commission
Premerger Notification Office
6th & Pennsylvania Avenue, N.W.
Bureau of Competition, Room 303
Washington, D.C. 20580

2003 DEC -4 P 4:50
FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

Dear Mr. Verne:

I am writing to confirm the Hart-Scott-Rodino advice you provided to [redacted] of [redacted] and myself in a telephone conversation on December 3, 2003. We discussed a proposed transaction involving two currently unaffiliated partnerships: Partnership A and Partnership B. Each partnership has a limited liability company as its general partner ("GP-A" and "GP-B").

As we indicated, the transaction involves two steps:

Step One: Partnership A will acquire a 50% non-voting membership interest in GP-B in exchange for a cash payment in excess of \$50 million. Partnership A's 50% interest in GP-B will entitle it to certain rights to veto major events of Partnership B, e.g., declaration of bankruptcy. However, Partnership A will not participate in the management and affairs of Partnership B; the other member of GP-B will continue to be the sole managing member of the GP-B.

Step Two: Partnership A and Partnership B will merge (as will GP-A and GP-B) in a Hart-Scott reportable merger transaction.

You advised that completion of step one would not be subject to Hart-Scott filing requirements. In conformity with Formal Interpretation 15, you indicated that Partnership's A's acquisition would not be reportable because, as a result of the acquisition, A would not hold 100% of the interests in the LLC. You further indicated that your conclusion that no step one filing is required is not changed by the fact that the LLC interest in GP-B will be acquired at the same time or shortly after the merger agreement for step two is signed. As you indicated, the



fact that at the time step one is completed the parties have the intention and contractual obligation (subject, of course, to various conditions) to complete the merger does not change the application of Formal Interpretation 15 to the circumstances here. Thus, you advised that step one would not be deemed to constitute "gun jumping," i.e., premature transfer of beneficial ownership. In any event, step one is a freestanding and independent transaction. If for any reason the merger in step two does not take place, step one is not subject to any automatic unwind.

We further requested your advice on an issue regarding the filing required in connection with step two. Specifically we asked how we should account for the LLC holdings of Partnership A that were acquired in step one. The issue arises because partnership A will hold 50% of the membership interests of the GP-B LLC, but GP-B has varying rights to the profits of Partnership B. GP-B currently has a 1% general partnership interest in Partnership B which entitles it to incentive distributions. These distributions are paid out in increasing percentages as Partnership B's quarterly distributions increase. The distributions are capped at a marginal rate of 50%, but the total distributions are of course less than 50% of B's total distribution in any quarter. You indicated that in a situation such as this one where the payout of partnership profits is based on a varying percentage, the profits to which a party is entitled are said to be "indeterminate" for HSR purposes, and the percentage of partnership control is determined based on entitlement to assets upon dissolution of the partnership. Thus, you advised that Partnership A would only be deemed to control Partnership B if GP-B (as to which Partnership A would have 50% control following step one) has the right, at the time of filing to 50% or more of the assets upon dissolution of Partnership B.

Please call me at [REDACTED] or [REDACTED] at [REDACTED] if the above does not accurately describe the advice you provided or if you have any questions. We very much appreciate your help on this matter.

Very truly yours,

[REDACTED]

By [REDACTED]

cc: [REDACTED]
[REDACTED]

AGREE.

B. Michael Verne

12/5/03