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December 17, 1990

Via Telefax

Richard B. Smith, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 312
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Smith:

Interpretation Under the Hart-Scott-Rodino
Antitrust Improvements Act of 1976 and Rules and
Regulations of the Federal Trade Commission Thereunder

This letter is to confirm the informal advice of the Premerger Notification Office in the proposed transaction which I described to you by telephone a few weeks ago. We discussed this matter again on Friday, December 14, 1990, and I appreciate your thoughtful comments.

Person "A" and Person "B" each currently has the right to 50 percent of the profits (and, in the event of dissolution, to 50 percent of the assets) of Partnership X. The last regularly prepared balance sheet of Partnership X shows $20 million in total assets and $15 million in liabilities. Person "A" and Person "B" each satisfies the interstate commerce requirement and size-of-the-person test. Person "A" proposes to acquire for $10 million in cash Person "B"'s partnership interest in Partnership X.

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You indicated that the Premerger Notification Office continues to view the acquisition of partnership interests by which one person would acquire and hold all of the partnership interests of a partnership as a potentially reportable acquisition of all of the assets of the partnership. As applied to my hypothetical, the staff's view is that the acquisition by Person "A" of the partnership interest of Person "B" should be considered to be the acquisition by Person "A" of assets of Person "B" consisting of all of the assets of Partnership X.

The questions I posed to you concern the proper approach under § 801.10 to determine the value of the assets to be so acquired and the acquisition price. You have confirmed the following:

<u>Value</u>. Person "A" is required under § 801.10(c)(3) to determine in good faith the fair market value of the assets to be acquired. The value of the assets to be acquired by Person "A" from Person "B" is the value of the assets of Partnership X. Moreover, in determining the fair market value of the assets of Partnership X, liabilities "related to the assets to be acquired may be taken into account." (<u>See</u> Interpretation No. 87.) Accordingly, the fair market value of the assets to be acquired by Person "A" by reason of its acquisition of the partnership interest of Person "B" is the value of Partnership X. Thus, in rough terms, Person "A"'s asset acquisition is likely to be a deemed $20 million acquisition of assets from Person "B", assuming the value of Partnership X is $20 million.

<u>Acquisition Price</u>. The sole consideration to be paid for the partnership interest, the "assets to be acquired," is $10 million. Person "A" is not (and is not deemed to be) assuming liabilities of Person "B" merely by reason of the acquisition of the partnership interest of Person "B" in Partnership X and consequent acquisition of the assets of Partnership X. The partnership entity continues to be responsible for its own debts (albeit, unlike a corporation, the individual partners are not insulated from liability for partnership debts and must personally stand behind them). Thus, for purposes of § 801.10(c)(2), the only consideration received by Person "B" in my hypothetical transaction "for the assets to be acquired" is $10 million in cash.

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Please let me know if my analysis is incorrect in any way. Thank you, once again, for your assistance and thoughtful comments.

Yours very truly,

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12/21/90 - Advised [redacted] phone mail that 801.10 (b) states that the value of assets to be acquired, i.e., assets of partnership, is fair market value of assets (or, if determined and greater than the fair market value, the acquisition price. Since A is paying for B's partnership interest and not for the assets of the partnership, it makes sense that the acquisition price for the assets has not been determined (or is less than the fair market value of the assets) and, thus, in cases such as these (one entity buying out all other partnership interests), the value of the partnership assets to be acquired is their "fair market value."

R B Smith