[redacted] (TH)

October 10, 1991

VIA COURIER

Federal Trade Commission
Bureau of Competition
Sixth and Pennsylvania Avenues, N.W.
Washington, D.C. 20850

Attn: Thomas Hancock

Re: Hart-Scott-Rodino Filing

Dear Mr. Hancock:

Pursuant to our telephone conversation on October 8, 1991, we are writing to request your advice as to whether, in the circumstances described below, a limited partner of a partnership will be deemed to be in control of the partnership, and thus its "ultimate parent entity" as such term is defined under the premerger notification rules (the "Premerger Rules") of the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

Our client is a [redacted] limited partnership (the "Partnership") that has been established to acquire equity interests in established businesses (referred to herein as "portfolio companies"). The Partnership currently has two general partners, one of which is the managing general partner, and five limited partners. The managing general partner of the Partnership has exclusive responsibility for the management and

control of the Partnership. To date, the Partnership has made one equity investment in a portfolio company in an amount of approximately $9 million. One of the limited partners ("Partner X") contributed approximately 54% of the capital required to make this equity investment. As a result, Partner X is entitled to approximately 54% of the profits of the Partnership from such investment,[1] and upon liquidation of the Partnership, would be entitled to approximately 54% of the assets of the Partnership.

The Partnership is contemplating the acquisition of another portfolio company. The total investment to be made by the Partnership in the second portfolio company will be approximately $9 million. It is anticipated that Partner X will contribute approximately $997,000 to the Partnership in connection with this second investment. Under the Partnership Agreement, profits and distributions generated by the Partnership's investment in a portfolio company are allocated among the partners on the basis of the partners' capital contributions with respect to such investment. Accordingly, Partner X will be entitled to approximately 11% of the profits generated by the second portfolio company,[2] and if the Partnership were liquidated, Partner X would be entitled to approximately 11% of the Partnership assets relating to the second portfolio company.

Pursuant to Section 8.01.1(b)(1)(ii), a limited partner is deemed to control a partnership if it has the right to 50% or more of the profits of the partnership or, in the event of dissolution, the limited partner is entitled to 50% or more of the assets. Upon consummation of the proposed acquisition, Partner X will no longer be entitled to more than 50% of the profits of the Partnership. Although Partner X will still have a right to approximately 54% of the profits generated by the Partnership's first portfolio investment, it will only be entitled to 11% of the profits generated by the second portfolio investment. In the event of dissolution, Partner X would be entitled to approximately 54% of the Partnership assets relating to the first

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1/ Partner X is entitled to approximately 54% of the profits of the Partnership until it has received back its capital investment and a 12% return thereon. Thereafter, Partner X is entitled to approximately 43.2% of the profits from the Partnership.

2/ Partner X would be entitled to approximately 11% of the profits from the second portfolio company until its capital contribution with respect to this investment has been returned and it has received a 12% return thereon. Thereafter, Partner X would be entitled to approximately 8.8% of the profits generated by this investment.

investment and approximately 11% of the Partnership assets relating to the Partnership's proposed second investment. Since the size of the Partnership's investment in the two portfolio companies is expected to be approximately the same, if the Partnership were liquidated immediately after consummation of the proposed acquisition, Partner X would be entitled, on a cumulative basis, to approximately 33% of the assets of the Partnership. Moreover, it is anticipated that Partner X's interest in the Partnership will continue to be reduced since the total capital which Partner X has committed to the Partnership (and which has not yet been invested) is less than 10% of the total capital commitments of the other partners in the Partnership.

Given that Partner X will be entitled to less than 50% of the profits generated by the second portfolio company and less than 50% of the Partnership assets relating to the second portfolio company upon liquidation of the Partnership, and that in the future Partner X is expected to continue to have a reduced interest in the Partnership, we believe that Partner X should not be deemed to be the ultimate parent entity of the Partnership pursuant to Section 801.1(a)(3) of the Premerger Rules.

On the basis of the foregoing, we request that the staff of Federal Trade Commission confirm that Partner X would not be considered an ultimate parent entity of the Partnership. If you have any questions regarding the above or need any further information please do not hesitate to contact me.

Sincerely,

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[redacted] 10/15/91

10/1-1-91

Told writer that X would control because meets definition of control

Told writer that X would control because meets definition of control at the time of consummation despite the fact that upon consummation it would no longer have 50% interest. Cf. § 801.1

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