

Formation of a
Partnership
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802.1
801.40?

[REDACTED]

November 4, 1991

VIA TELECOPY (202) 326-2050

Mr. Patrick Sharp, Compliance Specialist
Premerger Notification Office, Room 303
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

This material may be subject to
the confidentiality provision of
Section 7A (h) of the Glass-Steagall
Act which restricts release of information
to the Department of Justice.

Dear Mr. Sharp:

This letter will confirm our telephone conversation earlier today. During that conversation, you concurred with our opinion that the transaction we discussed, as described below, would be exempt from the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act.

The transaction in question involves the formation of a noncorporate joint venture between Party X and Party Y that would own mining rights (the "realty interests") to certain undeveloped property. These realty interests are currently owned by Party Y. Party X will initially pay \$100,000 for an option to acquire a 60% interest in the joint venture. This option may be exercised within 30 days (subject to extensions relating to title conditions) for additional consideration. If the option is exercised, Party Y will receive from Party X a total of \$1,250,000 in cash (including the \$100,000 option payment). Thereafter, to maintain the option in effect, Party X would be required to pay an additional \$3,750,000 over the course of approximately one year. In addition, the agreement that would govern the joint venture would require Party X to spend at least \$5,000,000 over the next four years to explore and, if appropriate, develop the property. Finally, Party X would be required to spend a total of \$18,000,000 in a combination of exploration and development expenditures and payments to Party Y to complete the transaction.

For purposes of this letter only, we assume that this transaction might be characterized as an acquisition by Party X of a 60% interest in the realty interests of the joint venture. Based on our conversation, however, we understand that the transaction falls within the Premerger Notification Office staff's definition of an acquisition of realty transferred in the ordinary course of business, because the deal involves the transfer of realty rights in undeveloped property, which rights are not currently revenue-

wrong - the
formation
of a non-
corporate
joint venture
is not reportable

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producing. See ABA Premerger Notification Practice Manual, Interpretations Relating to Section 7A, Paragraph 2, pp. 1-2. Since Section 7A(c)(1) of the Clayton Act exempts ordinary course of business transactions from the notification requirements, Party X need not file a Hart-Scott-Rodino Notification Form as an acquiring person.

If this letter does not correctly reflect our conversation or mischaracterizes the view of the Premerger Notification Office, please contact me immediately. Unless we hear from you, we will advise our client, Party Y, to rely on your advice that there are no reporting obligations under the Hart-Scott-Rodino Antitrust Improvements Act.

We thank you for your time and assistance on this matter.

Very truly yours,

[Redacted signature]

cc: [Redacted]

*This letter is in error.
called [Redacted] 11-5-91
and informed her of such.
(PS)*

[Redacted]