802.30

[redacted]

January 23, 1992

Mr. Richard Smith, Esq.
Federal Trade Commission
Premerger Notification Office
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Smith:

The purpose of this letter is to confirm our telephone conversations of December 18, 1991 and January 14, 1992 in which you agreed that the merger or consolidation of three wholly owned partnerships of a company whose assets are valued at greater than $100 million (the "Company") into a newly formed wholly owned subsidiary of the Company ("Newco") would be exempt from the notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"). The relevant facts, as we discussed them, are as follows:

The Company is considering a reorganization of its corporate structure (the "Reorganization") which, in relevant part, is currently as set out in attached Annex 1. It is contemplated that the Reorganization would be effected through the consolidation of certain of the Company's wholly owned corporations and partnerships (collectively, the "Subsidiaries") into a newly formed, wholly owned corporate subsidiary of the Company ("Newco"). No assets or securities of the Company or its subsidiaries will be acquired by any third parties pursuant to the Reorganization.

The Company currently owns, either directly or indirectly, (i) all of the capital stock of each of Corporations A, B and C, (ii) 80% of the capital stock of Corporation D, and (iii) 100% of the partner interests of each of Limited Partnership No. 1 ("LP1"), Limited Partnership No. 2 ("LP2") and General Partnership ("GP"). Specifically, the Company's organization is as follows:

1. Corporation A is a direct, wholly owned subsidiary of the Company.

[redacted]

2. The Company owns 100% of the general partner interests, and 76% of the limited partner interests, of LP1. Corporation A owns the remaining 24% of the limited partner interests of LP1.

3. The Company owns 100% of the general partner interests of LP2; LP1 owns 100% of the limited partner interests of LP2.

4. Corporation B is a wholly owned subsidiary of LP2.

5. The Company owns 11% of the general partner interests of GP; LP2 owns 89% of the general partner interests of GP.

6. Corporation C is a wholly owned subsidiary of GP.

7. The Company owns 23.3% of the common stock of Corporation D and LP2 owns 56.7% of the common stock of Corporation D.

The Reorganization, as currently contemplated, will involve the following steps:

1. GP will contribute all of its assets and liabilities to Newco.

2. Each of Corporation A, Corporation B, LP1 and LP2 will be merged with and into Newco.

3. Newco will dividend or otherwise transfer the stock representing its 56.7% interest in Corporation D, acquired as a result of Step 2, to the Company.

It is possible that the above steps may not occur in the above sequence or that, instead of mergers of the Subsidiaries into Newco, sales or contributions of all assets and liabilities of the Subsidiaries to Newco may be effected. The Company intends the end result of such transactions, however, no matter in what sequence or manner such transactions are effected, to be that Newco will be the successor to all of the assets and liabilities of each of Corporation A, Corporation B, LP1, LP2 and GP. As a result of the Reorganization, the Company's corporate organization will be as set out in attached Annex 2.

Section 7A(c)(3) of the Act exempts from the requirements of the Act "acquisitions of voting securities of an issuer at least 50 per centum of the voting securities

of which are owned by the acquiring person prior to such acquisition . . . " Rule 802.30, promulgated under the Act, provides that:

> An acquisition . . . in which, *by reason of holdings of voting securities*, the acquiring person and the acquired person are (or as a result of formation of a wholly owned entity will be) the same person, shall be exempt from the requirements of the [A]ct. (Emphasis added.)

The Company will be both the "acquiring person" and the "acquired person" under Rule 801.2 in connection with each of the consolidation of LP1, LP2 and GP into Newco although only in the case of Corporation A will the Company be the acquired person "by reason of holdings of voting securities." In the case of each of LP1, LP2 and GP (and Corporation B, whose voting securities are held by LP2, and Corporation C, whose voting securities are held by GP), the Company "controls" such entities, as such term is defined by Rule 801.1(b)(1)(i), but because of the Staff's view, set forth at 52 Fed. Reg. 20,058, at 20,062 (1987), that ownership interests in a partnership are not "voting securities" for purposes of the Act, the consolidation of the three partnerships into Newco will not fall literally within the language of the Rule 802.30 exemption. Therefore, the Act and the regulations thereunder, when read literally, appear to require a filing of a Notification and Report Form for the Company's acquisition of each of LP1, LP2 and GP and the expiration or termination of the waiting period under the Act before the consolidations of such partnerships into Newco may be consummated.

An interpretation of the staff of the Federal Trade Commission (the "Staff") exists, however, that affects such conclusion. Under the Act, the Staff considers an acquisition that results in the ownership of 100% of a partnership's interests to be an acquisition of all of the assets of such partnership. 52 Fed. Reg. 20,058, at 20,061 (1987) (the "Wholly Owned Partnership Interpretation"). Thus, in the present case, because the Company owns, either directly or indirectly, 100% of the partnership interests of LP1, LP2 and GP, the Company is deemed under the Act to own all of the assets of such partnerships pursuant to the Wholly Owned Partnership Interpretation. As a result, the consolidation of the three partnerships into Newco may be viewed as simply the transfer of certain assets owned directly by the Company to a wholly owned corporate subsidiary of the Company. The requirement under Rule 802.30 that the acquiring and acquired persons be the same person "by reason of holdings of voting securities" is never at issue, because under the Wholly Owned Partnership Interpretation, assets of the three partnerships are deemed to be directly owned by the Company and it is uncontroverted that the Act would not apply, pursuant to Rule 802.30, to the contribution by the Company of its directly owned assets to its wholly owned subsidiary. Accordingly, the requirements of the Act, including the

[redacted]

filing of a Notification and Report Form thereunder, would not be applicable to the Reorganization.

Please call the undersigned at [redacted] should the position of the Staff with regard to this issue be different from that set forth above. I appreciate very much your assistance and helpful advice in this matter.

Very truly yours,

[redacted]

JDH:71

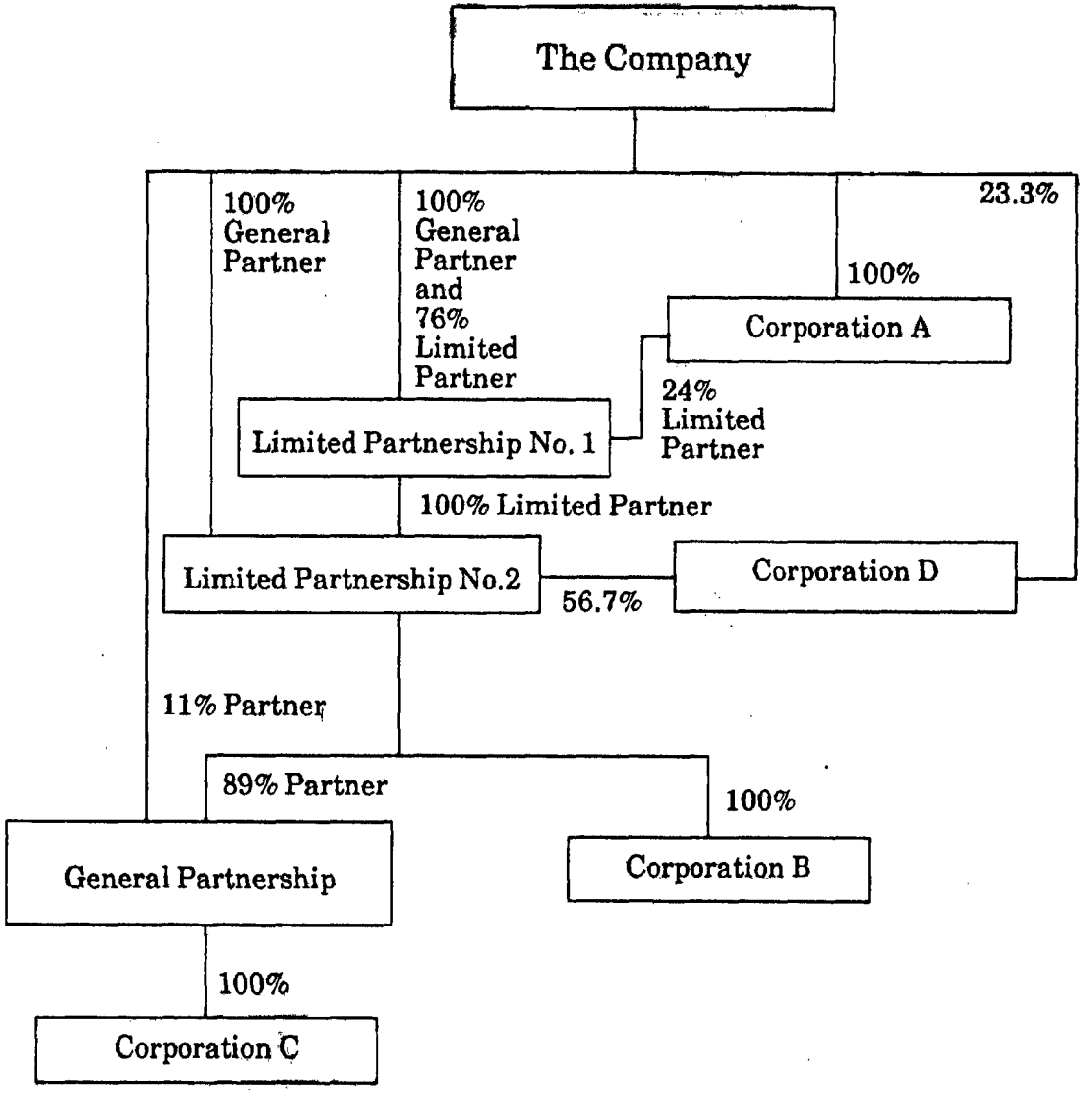
1/28/97 - called [redacted]. He advised that in the General Partnership there are no limited partnership interests. He also advised that the holders of the 20% of Corporation D's voting stock before the Reorganization would be the same holders, with the same percentage interest, of D's voting stock after the Reorganization. I advised that his analysis was correct and that the Reorganization is exempt under 802.30.

PLS/mtk

[redacted]

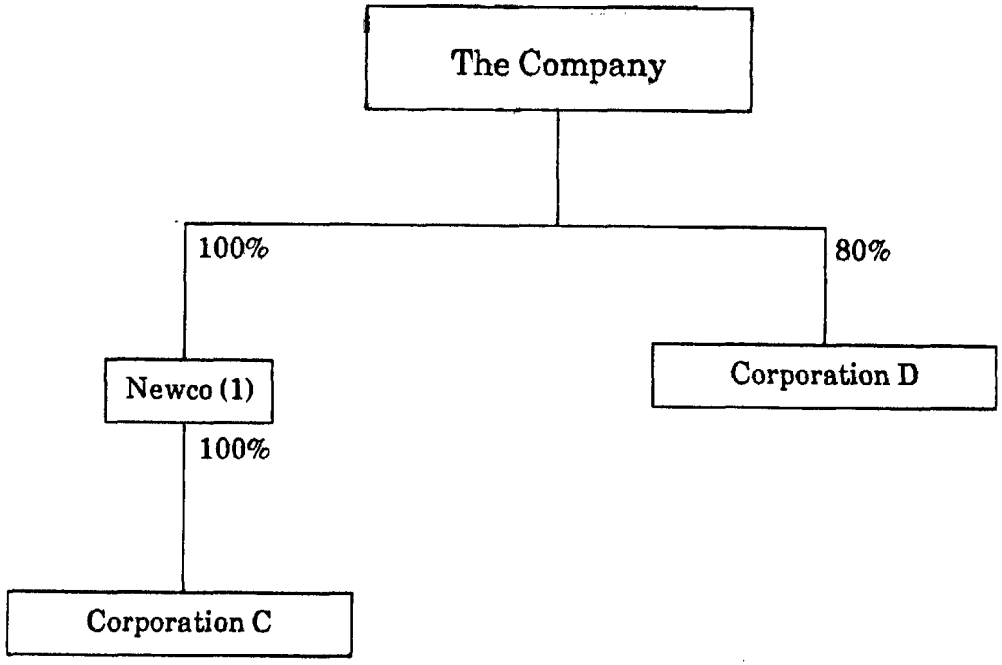
Annex 1

Current Corporate Structure



Annex 2

Post - Reorganization Corporate Structure



(1) Successor to Limited Partnerships No. 1 and No. 2, General Partnership and Corporations A and B.

[redacted]