

02.20

February 27, 1992

Premerger Notification Office
Federal Trade Commission
6th Street and Pennsylvania Ave. N.W.
Room 303
Washington, D. C. 20580

Re: Applicability of Hart-Scott-Rodino
Antitrust Improvement Act of 1976

Gentlemen:

This letter is written pursuant to 16 CFR § 803.30 to request a formal or informal interpretation of the requirements of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, 15 U.S.C. § 18a (Supp. 1991) (the "Act"), and its applicability to the transaction hereinafter described.

Corporation J and its affiliates have for several years been involved in business of acquiring, holding, owning, servicing and disposing of promissory notes, loans, receivables and related assets, together with assets held, acquired or pledged as collateral therefore, including real estate, from the Resolution Trust Corporation, Federal Deposit Insurance Corporation, and other third parties. Corporation C has provided financing to corporation J and its affiliates related to the acquisition of such promissory notes, loans, receivables and related assets. Corporation J and corporation C have over the past several months had discussions related to entering into a business arrangement where they would, through a commonly controlled entity, acquire such promissory notes, loans, receivables and related assets. In contemplation of the completion of such an arrangement, corporation J organized WL, a limited partnership, to use as the entity to acquire the promissory notes and related assets and organized corporation W to serve as general partner of WL.

Corporation J owns 50% of the shares of corporation W and a 49.5% limited partnership interest in WL. The remaining shares of corporation W are owned by individual S who owns 25% and individual H who owns 25%. Corporation W owns a 1% interest as the general partner of WL. Individual S also owns a 24.75% limited partnership interest in WL, with the remaining 24.75% limited partnership

unless
correct
not
reportable

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*husband & wife 2
part of + minor child (2) / NO*

interest in WL being owned by individual H. The transaction at issue contemplates that S and H will transfer and convey their combined 50% percent interest in corporation W and their combined 49.5% limited partnership interest in WL to corporation C.

Transaction price? \$15mm

Corporation C has assets in excess of \$100 million. Corporation J has assets of approximately \$15 million and corporation W has minimal assets. The limited partnership WL has assets of approximately \$10 million.

No person nor entity holds 50% or more of the outstanding stock of corporation J or has the power to designate 50% or more of the directors of the corporation. Based upon the foregoing facts and our reading of 16 CFR § 801.1, we believe corporation J to be the "ultimate parent entity" of corporation W and the limited partnership WL.

2 S & S are husband and wife or parent and minor child, another corp could exist - OK, no other parent exists.

It is our understanding that the Act would not apply to corporation C's acquisition of the limited partnership interest in WL because a partnership interest is neither an asset nor a "voting security" within the meaning of 16 CFR § 801.1(f).

and note: acq less than 100% of partnership interest S.

In addition, we believe, based upon the foregoing facts, our reading of the Act and the following rationale, that the transaction involving corporation C's acquisition of a 50% interest in corporation W would be subject to the requirements of the Act, but for the minimum dollar value exemption contained in 16 CFR § 802.20.

We believe the first prong of the Act, 15 U.S.C. § 18a(1), is satisfied due to the fact that both the acquiring person and the acquired person are engaged in "commerce" or in "activities affecting commerce" as those terms are defined in 16 CFR §§ 801.1(1) and 801.3.

Next, it would appear that the second prong of the Act is satisfied, based upon 15 U.S.C. § 18a(2)(B), in that corporation W, a person not engaged in manufacturing and which has total assets of \$10 million or more is being acquired by corporation C, a person which has total assets or annual net sales of \$100 million or more.

Finally, under the third prong of the Act, it would appear that as a result of the proposed acquisition the acquiring person (corporation C) would hold 15% or more of the voting securities or assets of the acquired person (corporation W) but would not hold an aggregate total amount of the voting securities and assets of the acquired person in excess of \$15 million. Since the third prong of the Act is an "either/or" test, it would appear that the Act would apply based upon the satisfaction of 15 U.S.C. § 18a(3)(A); however, the transaction would not appear to satisfy 15 U.S.C. §



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18a(3)(B) thus giving rise to a possible exemption pursuant to 16 CFR § 802.20. This section provides that an acquisition which would be subject to the requirements of the Act and which satisfies Section 18a(a)(3)(A), but which does not satisfy 18a(a)(3)(B), shall be exempt from the requirements of the Act if as a result of the acquisition the acquiring person would not hold:

- (a) assets of the acquired person valued at more than \$15 million; or
- (b) voting securities which confer control of an issuer which, together with all entities which it controls has annual net sales or total assets of \$25 million or more.

Based upon the foregoing facts and our reading of this exemption, we believe the exemption to apply so that it is unnecessary for the parties to this transaction to comply with the Act. Please confirm whether our understanding and interpretation of the Act and accompanying regulations is correct. Specifically, we request an interpretation whether the proposed acquisition of an interest in corporation W by corporation C is exempt from the reporting requirements and an interpretation as to whether the acquisition by corporation C of an interest in the limited partnership WL is reportable.

If you have any questions or need any additional information, please feel free to contact the undersigned.

Thank you for your attention to this request.

Very truly yours,

*called [redacted]
3-5-92 - I agree with letter w/dts (since notes clear up some of the questions)
[redacted] concurs*

*what is the siz of W.Corp?
If less than \$25.0 mm in net sales and total assets - then exempt under Section 802.20 (b)
It is < than W.Corp.*