Acquisition of less than 10% of partnership interests is not a reportable event. The .5% which remains outstanding was created when the partnership was [redacted] originally formed & then sold to a 3rd [redacted] person [redacted] subsidiary [redacted] as no relationship. Thus, it appears that there is no [redacted] hand & that the .5% is a valued, independently held partnership interest. Q is the beneficial owner of the .5%

50.1-4
50.1.90

FEDERAL TRADE COMMISSION PREMERGER NOTIFICATION OFFICE
10 2 41 PM '92

June 10, 1992

By Hand Delivery

Victor L. Cohen, Esq.
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Sixth St. and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Victor:

I am writing this letter to confirm the oral advice you provided on June 8 regarding the nonreportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 of an acquisition in which an existing partner will increase its holding of the interests in a partnership from 56.03% to 99.5%.

As background, I indicated that the partnership was originally created by partners A, B and C. A held 49% of the partnership interests and was a limited partner. B held 50.5% and was a general partner. C held .5% and was a limited partner. B and C were controlled by the same ultimate parent.

In a subsequent year, the partnership was restructured. A purchased a 7.03% partnership interest from B, thus increasing its ownership to 56.03%. A became a general partner. As a result of the sale to A, B's share of partnership interests decreased to 43.47% and B became a limited partner. C sold its .5% limited partnership interest to D, a third party not controlled by A or B. To help finance D's acquisition from C, the partnership made a distribution to D equal to .5% of partnership capital, with the requirement that D's .5% share of future profits would be used first to replenish D's capital account up to the .5% level, before being distributed out of the partnership to D.

A now intends to acquire B's 43.47% interest, thus increasing A's partnership interests to 99.5%. A has an option to acquire the remaining .5% interest from D in two years.

A does not control Q. Q is not an agent of A + A did not want Q use to acquire the interest for A's benefit.

The question I raised was whether A's proposed acquisition of 99.5% of the partnership interests would result in a reportable acquisition of the underlying partnership assets, or whether, instead, there would be no reportable acquisition until or unless A acquired the remaining .5% interest. You indicated that A's acquisition of the 99.5% interest would not be reportable. You also advised that if A were subsequently to acquire the remaining .5% interest, an HSR filing would be required at that time.

As we discussed, your advice is supported by both Interpretation 93 of the ABA's Premerger Notification Practice Manual (1991) and the Commission's Statement of Basis and Purpose accompanying the partnership control regulations, 52 Fed. Reg. 20058 (May 29, 1987). As the Manual states (at 71):

> [A]n acquisition of less than all of the interests in a partnership is not a reportable event. The reason is that the transfer of less than 100 percent of a partnership's interests is not regarded as an acquisition of an asset or voting security within the meaning of the rules.
>
> * * *
>
> This position is almost as old as the rules themselves. The Commission might have regarded partnership interests as assets, potentially reportable upon their transfer, but the staff chose not to do so.

Similarly, the Commission's Statement of Basis and Purpose to amended rule 801.1(b) states that while consideration has been given to a different rule, acquisitions of less than 100% of a partnership remain nonreportable:

> [T]he Commission is considering whether, in light of its adoption of the "partnership control" rule, it should also revise its rules to require reporting the acquisition of control of a partnership. Currently, the staff interpretation makes acquisition of less than a 100% interest in a partnership not reportable, because a partnership

[redacted]

interest is deemed to be neither a voting security nor an asset.

52 Fed. Reg. at 20061.

If the above does not accurately reflect the advice you provided that A's proposed acquisition of 99.5% of the interests in the partnership described above would not be reportable under Hart-Scott, please call me immediately.

As always, I thank you very much for your time and most helpful assistance.

Very truly yours,

[redacted]

see response on separate sheet §2 C-1

C-1

§2.50

(a)

To be exempt under C-1 the sale of assets subject to a long term lease financing arrangement cannot be a sale from a lessor who is exiting the business which exiting is not equivalent to a lease financing entity which has been created for a single transaction as these single purpose trusts + partnerships are not competing on a recurring basis with other financial companies.

The acquisition is exempt, however, as an acquisition of a foreign asset under section §2.50(a). The [redacted] are foreign assets because they generate 100% of their revenues outside the U.S., only infrequently, if ever, sail into U.S. territorial waters + their U.S. registry is only for limited reasons.

[redacted]