

partnership
801.90

[REDACTED]

July 31, 1992

William Schechter, Esq.
Premerger Notification Office
Federal Trade Commission
6th and Pennsylvania Ave., N.W.
Room 301
Washington, D.C. 20580

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FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

Dear Mr. Schechter:

Following up on our conversation yesterday, this letter replaces my letter to you of July 24, 1992, and clarifies the timing of the proposed transaction we discussed. It is my understanding that you agree with our analysis of the circumstances described below (recognizing that the Commission does not issue formal opinions on whether filing is required in a particular instance).

This letter concerns whether our client is required to file a premerger notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") and the rules and interpretations (the "Rules") of the Federal Trade Commission (the "Commission") thereunder in the following circumstances.

While the following description is simplified (for example, certain numbers have been rounded for convenience), it sets forth the essential facts for the purpose of analyzing this transaction. All steps described below are part of a single transaction relating to the formation of the Partnership.

Our client is an [REDACTED] which is a party to the following transaction with an operating company (the "Company"). In this transaction: (a) [REDACTED] created a newly-formed partnership (the "Partnership") within the past [REDACTED] (b) the Partnership entered into an agreement with the [REDACTED] Company by which assets (the "Assets") of the Company worth [REDACTED] will be transferred to it (in approximately 7 weeks), (c) at the time the Assets are transferred, [REDACTED] will contribute [REDACTED] in cash to the Partnership in exchange for a [REDACTED] interest in the Partnership, and (d) the

Company will receive a [REDACTED] interest in the Partnership and equalizing payments totalling [REDACTED] in the form of cash which the Partnership will borrow from a third party financial institution, and a [REDACTED] in the form of a promissory note of the Partnership), causing the net value of the Assets transferred to the Partnership by the Company to be [REDACTED] minus the equalizing payments of [REDACTED]. At the conclusion of these transactions, the Partnership will be owned [REDACTED] by [REDACTED] and [REDACTED] by the Company; the contributions of [REDACTED] and the Company will have been in proportion, with [REDACTED] having contributed [REDACTED] of the capital [REDACTED] and the Company having contributed [REDACTED] of the capital (Assets having a net value of [REDACTED] after payment of the [REDACTED] equalizing payment).

It is our view that Sections 801.40 and 801.90 of the Rules (including the related interpretations of the Commission) are relevant to this transaction. Under those Sections, taken together, it is the settled policy of the Commission that a partnership formed in these circumstances will never be subject to the reporting requirements of the HSR Act unless there is some shifting of the economic interests of the parties involved in the process (or unless the transaction is entered into in order to avoid the operation of the HSR Act, which is inapplicable in this case). In the present case, [REDACTED] will have contributed [REDACTED] for a [REDACTED] interest in the Partnership and the Company will have contributed the Assets, which, after equalizing payments, have a net value of [REDACTED] for a [REDACTED] interest in the Partnership. Under these circumstances, [REDACTED] will not be required to make a filing under the HSR Act for this transaction.

I greatly appreciate your assistance in this inquiry. Thank you very much for your help.

Very truly yours
[REDACTED]