

facts indicate that transfer of non-cash <sup>General</sup> assets to partnership for cash is part of formation <sup>process</sup> process via exempt [redacted] (nature of transfer - fact that partnership was not funded & not active are important.

[redacted]

This material may be subject to the confidentiality provision of Section 7A (h) of the Clayton Act which restricts release under Freedom of Information Act.

[redacted]

November 30, 1992

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Dear Mr. Cohen:

This will confirm your advice as given in a telephone conversation on November 25 with [redacted] and the undersigned.

[redacted] and I described a proposed transaction as follows: Corporation A and Corporation B (or wholly owned subsidiaries thereof) intend to form a joint venture in the form of a general partnership in which each partner will hold a 50% economic interest. The partnership is being formed for the sole purpose of owning and operating a business presently held by A (the "Business").

The transaction will be structured as follows: (1) in anticipation of the the transaction described herein, the parties formed on November 27, 1992 a general partnership under Delaware law, which will not conduct any business or be funded more than nominally until at the closing; (2) at closing, the following will occur simultaneously: A and B will each contribute \$16.5 million to the partnership; the partnership will purchase \$371 million of

assets of the Business from A and assume \$338 million of related liabilities; the partnership will pay \$33 million in cash to A.

Thus, although structured as described above, the net result of the transaction will be that A will have contributed \$371 million of assets to the partnership and the partnership will have assumed \$338 million of related liabilities of A. In order to equalize the parties' respective contributions, A will have received a net payment of \$16.5 million in cash.

It may also be relevant to note that A and B have no prior relationship, and in particular, have not jointly operated any other business in the past. In addition to the above described transaction, A and B are also planning to enter into an unrelated transaction in which B will purchase assets of a different business from A. This second transaction will be reported under the H-S-R Act.

No reporting obligation should arise with respect to the first transaction because the formation of a partnership is not the formation of a "joint venture or other corporation" within the meaning of § 801.40 of the Rules, nor are partnership interests viewed as voting securities within the meaning of § 7A(b)(3)A) of the H-S-R Act and § 801.1(f)(1) of the Rules. Of the examples given in the Interpretations included in the ABA Premerger Notification Practice Manual, the above described transaction most closely resembles the first example in the last paragraph of Interpretation No. 47. We discussed whether the example given in the last sentence of Interpretation No. 196 would be applicable because the partnership technically will have been formed before acquiring the Business from A and cash contributions to the partnership will have been made by the partners simultaneously with the closing of the purchase of the Business. However, because the partnership was formed solely in connection with the transaction described and will not be funded until at the closing nor operate until after closing, and because the net effect of the events at closing will be that A and B will make equal contributions to the 50/50 partnership, the transaction would be viewed as a non-reportable partnership formation.

Although no further transactions are presently planned in connection with the partnership, the parties understand that, if one party should subsequently buy out the other's partnership interest, or if the partnership should subsequently purchase additional assets from one of the partners, such a transaction would be reportable if other requirements of the H-S-R Act and Rules are met.

We very much appreciate your attention to this matter. I would appreciate your giving me a call if you are not in agreement with the foregoing. If a filing should be required, the parties hope to file on Tuesday, December 1 in anticipation of a closing by year end.

Very truly yours,

[REDACTED]

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[REDACTED]