801.40; 801.1(g)(1)

[redacted]

[redacted] of the Clayton Act which restricts [redacted] disclosure under the Freedom of Information Act.

June 13, 1994

Richard Smith, Esq.
Pre-Merger Notification Office
Bureau of Competition
Room 303 Federal Trade Commission
Washington, D.C. 20580

Re: Acquisition of Partnership Interest

Dear Mr. Smith:

I am writing to follow up on the various telephone conversations we have had regarding the above-referenced subject, and particularly our discussion of today, June 13.

We represent a person involved in a transaction which, if consummated, will be structured as follows:

The stockholders of Corporation A will form a new company, Corporation B. They will contribute cash to Corporation B, and receive shares in the same proportions as they own shares of Corporation A. In other words, Corporation A and Corporation B will be held by the same people, in the same percentages. The formation of B will not be a reportable event.

A and B will then form Partnership. B will contribute a not insignificant amount of cash, and receive a 1% interest in Partnership. Corporation A will contribute its entire business -- fixed assets, intangibles, liabilities, goodwill, etc. -- and receive a 99% interest in Partnership. The contributions of A and B will be roughly proportionate to the interests in Partnership they acquire. At this point in time the 99% interest in Partnership will be A's sole asset. Similarly, the 1% interest will be B's sole asset.

Immediately after Partnership is formed and funded, Corporation X will acquire a 50% interest in Partnership from A (leaving A with 49%) and a 1% interest in Partnership

[redacted]

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from B (leaving B with nothing). Corporation X will then own a 51% interest in Partnership, and will have effective control of Partnership's assets. Corporation B will be dissolved.

All of these events will occur at a single closing. Conceptually they will occur seriatim, but for all practical purposes they will take place simultaneously.

It is our understanding that the above-described transaction is not reportable under the Hart-Scott-Rodino Antitrust Improvements Act, even though it meets the size-of-the-parties and size-of-the-transaction tests of the Act. We understand that the formation of a bona fide partnership is never a reportable transaction. We also understand that, in the view of the Pre-Merger Notification Office, acquisition of a bona fide partnership interest of less than 100% is neither an acquisition of voting securities nor an acquisition of assets, for purposes of pre-merger notification requirements, and thus is not reportable. Finally, we understand that, if at some time in the future Corporation X acts to acquire 100% of Partnership, the acquisition which takes Corporation X to 100% ownership will be reportable.

I would appreciate receiving your informal opinion as to whether, based on the facts as set forth in this letter, our understanding is correct. I appreciate your cooperation, and I look forward to hearing from you.

Very truly yours,

[redacted]

[redacted]

6/16/94 - called writer and advised that the conclusions reached in this letter were correct. (The writer had previously informed me that there was no "avoidance" intent behind the manner in which this deal was structured but rather, that its complex structure was driven by a variety of tax considerations.)

RBSmith

[redacted]