

FOI [redacted]

In the formation of a partnership, a partner can receive a cash payment from the partnership (which cash was contributed by another partner) as an "equalization" payment relative to the

[redacted]

[redacted]

partnership interests. For this case fit within this [redacted] sub. See also # 47 of the Premerger Notification Practice Manual.

August 19, 1994

VIA TELECOPY -- (202) 326-2050

Mr. Victor L. Cohen  
Premerger Notification Office  
Bureau of Competition  
Room 303  
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Washington, D.C. 20580

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AUG 19 7 19 AM '94  
FEDERAL TRADE COMMISSION  
PREMERGER NOTIFICATION OFFICE

Re: Hart Scott Rodino Antitrust Improvements Act of 1976: Premerger Notification

Dear Mr. Cohen:

Set forth below is a description of a transaction which we believe is not subject to the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). We would appreciate your observations as to whether you share our views regarding the reportability of the transaction described below.

The Transaction

[redacted]

[redacted] deemed to be the "ultimate parent entity" of [redacted] (the "Trust"), a revocable trust, which holds 100% of the voting securities of [redacted]. Prior to their contribution to the Trust, the voting securities of [redacted] were owned by [redacted]

[REDACTED]

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[REDACTED]

[REDACTED] will be entitled to: (i) greater than 50% of the profits of [REDACTED] and (ii) greater than 50% of the assets of [REDACTED] upon its dissolution.

[REDACTED] (a) [REDACTED] will have the right to receive 50% or more of the profits of [REDACTED] and [REDACTED] will have the right to receive 50% or more of the assets of [REDACTED] upon its dissolution.

For purposes of this memorandum, we have assumed that [REDACTED] meets the \$100 million "size of person" test and that [REDACTED] meets the \$10 million "size of person" test.

At the time of the formation of [REDACTED] the following events will occur simultaneously:

1. [REDACTED] will contribute to [REDACTED] 100% of its assets in exchange for a 49% interest in [REDACTED]
2. [REDACTED] will contribute to [REDACTED] approximately \$33.9 million in cash for a 51% interest in [REDACTED]
3. [REDACTED] will contribute to [REDACTED] certain technical, long-term, trend-following, mechanical commodity trading program developed by [REDACTED] and currently used in [REDACTED] business in exchange for which [REDACTED] will receive approximately \$33.9 million in cash.

*Specialization*

One year following the formation of [REDACTED] [REDACTED] will have the option, but not the obligation, to purchase from [REDACTED] an additional 24% of [REDACTED]. In such event, [REDACTED] will hold 75% of [REDACTED] and [REDACTED] will hold a 25% interest in [REDACTED].

If the option is not exercised, [REDACTED] will be required to transfer 1.1% of [REDACTED] or \$100. In such event, [REDACTED] would own 49.9% of [REDACTED] and [REDACTED] would own 50.1% of [REDACTED].

Commencing three years after the formation of [REDACTED] and until March of 2000, [REDACTED] will have the option, but not the obligation, to purchase from [REDACTED] 100% of [REDACTED].

[REDACTED]

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Discussion

Based upon the foregoing, we believe that the essence of this transaction revolves around the formation of [REDACTED]. As a general proposition, we understand that the Act does not govern the formation of partnerships. See e.g., American Bar Association, *Premerger Notification Practice Manual* No. 47 (1991); Axinn et. al., *Acquisitions Under the Hart-Scott-Rodino Antitrust Improvements Act* § 3.04 et. seq. (1991); 16 C.F.R. § 801.40 (1994); 43 Fed. Reg. 33,485 (1978). Accordingly the assets contributed to [REDACTED] (either directly or through [REDACTED] in connection with [REDACTED] s formation (i.e., in exchange for an equity interest in a partnership, even when combined with cash equalization payments), should not be subject to the reporting requirements of the Act. We understand that in the view of the Premerger Notification Office, this is the case even though various interim steps, including the steps set forth above, could, if analyzed in isolation and not as part of the formation of a partnership, be viewed as being subject to the Act's reporting requirements.

\* \* \*

We appreciate your thoughts regarding the transaction described above at your earliest convenience. As you know, my direct telephone number is [REDACTED]. We look forward to hearing from you.

Very truly yours,

[REDACTED]

[REDACTED]

[REDACTED]