Partnership Interests
801.1(f)(1)

[redacted]

March 16, 1995

VIA FAX

Nancy Ovuka, Esq.
Premerger Notification Office H-303
Federal Trade Commission
Washington, DC 20580

Dear Ms. Ovuka:

Set forth below are the facts on a proposed transaction that we discussed this morning. I greatly appreciate your assistance and look forward to receiving the staff's determination on whether a filing is necessary.

The acquiring corporation has over $100 million in assets and has entered into a letter of intent to acquire, through mergers, three separate corporations, which have no common parent. The total purchase price in the form of the acquiring corporation's stock will be in the $16 to $20 million range. No one of the three acquired corporations, or their respective shareholders, will receive as much as $15 million, and no one of the three corporations, or even all three of them together, have sales or assets in excess of $25 million. One of these three corporations has an individual parent who has assets exceeding $10 million.

test is $25mm or more

The three corporations are the only partners, one general and two limited, in a limited partnership. The corporation that has an individual parent with assets exceeding $10 million is a limited partner and has a right on dissolution to more than 50% of the assets of the limited partnership. As indicated above, that corporation's sales and assets are both under $25 million, even attributing to it all partnership sales and assets.

The three transactions are structured as mergers in order to achieve tax-free treatment to the selling shareholders and to allow the acquiring corporation to use the pooling-of-interests method of accounting.

It seems to us that the three transactions are not reportable. Two of them do not cross the size-of-the-parties threshold, and all three, considered as separate transactions, fail to cross the size-of-the-transaction threshold. The commentaries to interpretations 1 and 83 in the Premerger

100%

Notification Manual (ABA 1991) support treating the three transactions separately.

That the acquiring corporation will wind up controlling the assets of a partnership rather than a hotel (as in interpretation 1) or a joint venture (as in interpretation 83) seems to us irrelevant. After all, the only distinction between a partnership and a hotel or joint venture is that, if less than 100% of the partnership were being acquired, neither an asset nor a voting security would be involved. In other words, once you reach 100% of a partnership then you are dealing with assets, which are subject to the Act like any other assets or voting securities. yes

In short, it seems to us that there are three separate mergers, each involving an acquisition of voting securities. None is reportable because none crosses the size-of-the-transaction threshold, and two fall short of the size-of-the-parties threshold as well.

Thank you for your help. My direct line is [redacted]

Sincerely yours,

[redacted]

[redacted]

[redacted]

3/20

The transaction is viewed as both an asset & VS deal. If either is reportable, then a filing must be made. The acquiring corp will end up w/ all the partnership's [redacted] & thus, the assets.
interests

RS & PS concur