802.21 ; 801.2(d) and (e)

[redacted]

DEC 18 10 53 AM '95

December 15, 1995

VIA FEDERAL EXPRESS
Richard Smith, Esq.
Federal Trade Commission
Room 303
6th Street and Pennsylvania
Avenue, N.W.
Washington, D.C. 20580

[redacted]

Dear Mr. Smith:

On behalf of [redacted] and Senior [redacted] we hereby request your confirmation that [redacted] and [redacted] (each a "Fund" and together the "Funds") would be exempted from the filing requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") with respect to the proposed merger (the "Merger") among the Funds described below.

Each of [redacted] is a non-diversified, closed-end management investment company registered under the Investment Company Act of 1940, as amended (the "Investment Company Act"), and incorporated under the laws of the State of [redacted] Each Fund is advised by [redacted] an affiliate of [redacted] and seeks to provide stockholders with as high a level of current income as is consistent with its investment policies and prudent investment management. Each Fund seeks to achieve its investment objectives by investing primarily in senior debt obligations of companies ("Senior Debt"), including corporate loans made by banks and other financial institutions and both privately placed and publicly offered corporate bonds and notes. Each Fund has outstanding common stock ("Common Stock") which is listed on the New York Stock Exchange, and the rights of holders of Common Stock of each of Fund are equivalent. The Funds have not issued any other securities.

[redacted] and Plan of Merger among [redacted] the "Agreement and Plan"), it is contemplated that [redacted] will acquire [redacted] and [redacted] in the following manner: (i) each of [redacted] will be merged with and into [redacted] in accordance with the General Corporation Law of the State of [redacted] (ii) the separate existence of each of [redacted] will

[redacted]

cease; (iii [redacted] will be the surviving corporation; and (iv) each share o[redacted] Stock of each o[redacted] will be converted into the right to receive an equivalent dollar amount (to the nearest one ten-thousandth of one cent) of shares of Common Stock of [redacted] computed based on the net asset value per share of each Fund on the Effective Date (as defined below) of the Merger. The Board of Directors of each Fund has approved the Merger and Agreement and Plan. In addition, approval of the Agreement and Plan requires the affirmative vote of stockholders representing more than 50% of the outstanding shares of Common Stock of each Fund. In the event that the requisite approvals from the stockholders have been obtained, it is contemplated that [redacted] will collectively file articles of merger (the "Articles of Merger") with the Department of Assessments and Taxation of the State o[redacted] The Merger will become effective at such time as the Articles of Merger are accepted for filing by such Department (the "Effective Date"). As a result of the Merger, the separate existence of each of [redacted] will terminate. Moreover, as a result of the Merger, each of [redacted] will terminate its registration under the Investment Company Act.

In light of the foregoing, a question has been presented as to whether the Funds would be subject to the requirement of filing a Notification and Report Form under the HSR Act (the "Notification") in connection with the Merger. In a telephone conversation with the undersigned, you indicated that your office has an informal policy which allows exemptions from such filing requirements for transactions similar to the Merger. Specifically, you expressed that a transaction would be excepted from the requirements of the HSR Act when it is comprised of the following: (i) one investment company, Corporation A, purchases all of the assets of another investment company, Corporation B; (ii) the value of Corporation B's assets exceeds $15 million, but consists mainly of cash and securities of third-party issuers; and (iii) the value of Corporation B's remaining assets is below $15 million. In your view, the Notification would not be required for this transaction because, under Section 801.21[1] of the rules of the HSR Act (the "Rules"), the cash and securities held by Corporation B would not be considered to be assets of Corporation B for purposes of calculating the size-of-transaction

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[1] Section 801.21 provides that "[f]or purposes of section 7A(a)(3) [of the Clayton Act]..., cash shall not be considered an asset of the person from which it is acquired [and] neither voting or nonvoting securities...shall be considered assets of another person from which they are acquired."

test under Section 7A(a)(3)[2] of the Clayton Act, and the remaining assets of Corporation B standing alone would not meet the test. You further indicated that such transaction would fall under the institutional investor exemption provided by Section 802.64[3] of the Rules, assuming that the specific requirements of that section are satisfied. With respect to Section 802.64(b)(2), you expressed that the acquisition by Corporation A in the above transaction would still satisfy the "ordinary course of business" requirement even though Corporation A acquires all of Corporation B's assets and Corporation B terminates its business.

Under these guidelines, we request confirmation that the Funds should not be required to file the Notification in connection with the Merger. The Merger, although technically not an asset acquisition, will comply with each of the requirements described in the preceding paragraph (for ease of reference, the transaction described in the preceding paragraph will be referred to hereafter as the "Acquisition"). The practical effect of the Merger is that it will produce the same outcome as the Acquisition. Specifically, after the Merger has been effected, (i) [redacted] will have acquired all of the assets of each of [redacted] (ii) the value of the assets of each of [redacted] acquired by [redacted] will exceed $15 million, but it will consist mainly of securities of third-party issuers (i.e., Senior Debt held by each of [redacted] and (iii) the value of the remaining assets of each of [redacted] acquired by [redacted] will be below $15 million. Like the Acquisition, the Notification should not be required since Senior Debt held by each of [redacted] and acquired by [redacted] would not be considered to be assets of [redacted] respectively, for

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[2] Section 7A(a)(3) of the Clayton Act sets the size-of-transaction test as follows: (A) 15 per centum or more of the voting securities or assets of the acquired person, or (B) an aggregate total amount of the voting securities and assets of the acquired person in excess of $15,000,000.

[3] Section 802.64 provides in relevant part as follows: "An acquisition of voting securities shall be exempt from the requirements of the act,...if: (1) Made directly by an institutional investor [which includes investment companies registered under the Investment Company Act]; (2) Made in the ordinary course of business; (3) Made solely for the purpose of investment; (4) As a result of the acquisition the acquiring person would not control the issuer; and (5) As a result of the acquisition the acquiring person would hold either: (i) Fifteen percent or less of the outstanding voting securities of the issuer; or (ii) Voting securities of the issuer valued at $25 million or less."

purposes of calculating the size-of-transaction test, and the remaining assets of each of [redacted] acquired by [redacted] would not exceed the $15 million threshold under such test. Furthermore, like the Acquisition, the Merger should qualify for the institutional investor exemption provided by Section 802.64. The practical effect of the Merger is that [redacted] will have acquired the assets held by each of [redacted] and such acquisition will have been made directly by [redacted] in the ordinary course of business and solely for the purpose of investment in Senior Debt. Although [redacted] will technically acquire control of the issuers (i.e., [redacted] the acquisition of securities of the issuers in this situation is actually a procedural conduit for acquiring Senior Debt of third-party issuers. Furthermore [redacted] will not control any issuer of Senior Debt as a result of the Merger. Thus, the Merger will satisfy the substance of Section 802.64.

We do not believe that the fact that the transaction contemplated by the Funds is a merger rather than an asset acquisition should result in a different treatment of the Merger under the HSR Act. As evident from the above discussion, the difference between the Merger and the Acquisition is only in form and not in substance. A statutory merger has been chosen as the preferred method of combining the Funds solely for the reason that it will not require individual assignment of Senior Debt held by each of [redacted] would be the case in an asset acquisition. For all practical purposes, the effect of the Merger will be same as the Acquisition.

Based on the foregoing, we respectfully request your confirmation that the Funds would not be subject to the filing requirements under the HSR Act. It is contemplated that the registration statement on Form N-14 relating to the Merger will be filed with the Securities and Exchange Commission on or about December 28, 1995. Therefore, we would appreciate receiving your response as early as possible. If you have any questions or comments concerning this request, please feel free to call [redacted] at [redacted] or me at [redacted]

Sincerely,

[redacted]

12/19/95 - Advised writer's co-counsel [redacted] that such transaction is taking the form of a voting stock acquisition, 802.21 does not come into play. Therefore two filings must be made for the two mergers (and for any non-exempt reportable amounts of voting stock going back to shareholders of the merged companies).

RBSmith