SC1.40 (partnership formation); 802.20

[redacted]

September 18, 1996

By Messenger

Mr. Richard Smith
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington D.C. 20580

Re: Contribution of Assets to Existing Partnership

Dear Mr. Smith:

On Monday, September 16 [redacted] and I discussed with you whether a proposed transaction between our respective clients would be subject to the premerger notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). You requested that we send you a letter setting forth the relevant facts.

The proposed transaction involves two existing general partnerships, Partnership A and Partnership B. Partnership A proposes to contribute all of its assets (which have a value in excess of $15 million) to Partnership B, in consideration for a newly-issued partnership interest in Partnership B (the "Partnership B Interest"). This will result in a dilution of the interests of the existing partners of Partnership B. The existing partnership agreement of Partnership B will continue to govern that partnership, but it will be amended in certain substantive respects to take account of the transaction. Under applicable state law, however, the transaction will not result in a reconstitution or reformation of Partnership B as a new partnership.

Partnership A will then distribute the Partnership B Interest to its partners (possibly as a liquidating distribution in connection with a dissolution of Partnership A), and those partners will be admitted as partners of Partnership B.

We respectfully request that you conclude that the proposed transaction is not subject to the premerger notification requirements of the Act. The first part of the transaction, Partnership A's

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contribution of its assets to Partnership B, should be exempt because it represents a capital contribution to a partnership in consideration of a partnership interest. The fact that such contribution is occurring subsequent to the formation of Partnership B should not change this analysis: functionally, the asset transfer is the same as in a formation, and we perceive no reason why these functionally-equivalent transfers should be treated differently for purposes of the Act. The second part of the transaction, Partnership A's receipt of the Partnership B Interest from Partnership B, should be exempt because the Premerger Notification Office treats a partnership interest as neither an "asset" nor a "voting security" for purposes of the Act (so long as the acquiring person will not hold 100% of the partnership interests). *See* 52 Fed. Reg. 20,058, at 20,061 (1987). The third part of the transaction, Partnership A's assignment of the Partnership B Interest to its partners as a liquidating distribution, should be exempt for the same reason.

If possible, we would greatly appreciate your response by Friday of this week. My telephone number [redacted] Thank you very much for finding time in your busy schedule to consider these issues.

Yours very truly,

[redacted]

9/27/96 - Advised writer that PNO office does not view this as part of partnership formation. A filing is needed for partnership's purchase of assets.

RBSmith