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DATE: March 16, 1998
 TO: Nancy M. Ovuka
 FROM: [REDACTED]
 RE: Foreign Institutional Investor
 Exemption from HSR Act Reporting Requirements
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MESSAGE

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March 16, 1998

VIA FACSIMILE

Nancy M. Ovuka, Esquire
Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Room 304
Washington, D.C. 20950

**Re: Foreign Institutional Investor Exemption
from HSR Act Reporting Requirements**

Dear Ms. Ovuka:

This letter memorializes discussions that we had during March 12 telephone conversations.

I had called to request guidance concerning the Federal Trade Commission's interpretations of the institutional investor exemption in Section 7A(c)(11) of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a(c)(1) (1994), and 16 C.F.R. § 802.64 (1997), for acquisitions by foreign investment companies. As we discussed, section 802.64(a)(6) states that the institutional investor exemption is available only to a "investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 *et seq.*)."

As I described, we are seeing an increasing number of foreign investment companies, primarily European mutual funds, acquiring U.S. securities as part of their investment portfolios. However, these foreign investment companies do not trade their shares on a U.S. stock exchange and, consequently, do not have to register with the U.S.

[REDACTED]

Nancy M. Ovuka, Esquire
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Securities and Exchange Commission. I stated to you that these companies are, in all other respects, an "investment company" as defined in the Investment Company Act of 1940, 15 U.S.C. § 80a-3(a) (1994). Such companies are "engaged primarily in investing . . . or trading in securities," *id.*, and such companies comply with exchange registration, information disclosure and accounting standards established by the laws of the countries in which they offer their securities to investors. I stated that the Commission should treat these foreign investment companies similarly to U.S.-registered investment companies for HSR Act purposes, as foreign investment companies' purchases do not raise different competitive issues.

You responded in a subsequent telephone conversation that you had reviewed this issue with Joseph Krauss and Richard Smith of your office. You stated that your office has previously indicated that a foreign bank could potentially avail itself of the institutional investor exemption provided by section 802.64(a)(1), though that subsection refers to "a bank within the meaning of 15 U.S.C. § 80b-2(a)(2)," which defines "bank" as "a banking institution organized under the law of the United States." You stated that the same reasoning and result would apply to a foreign investment company "if it is an 'investment company' in all other respects, except that it has not registered with the SEC." Thus, I take from your response that a foreign investment company that has not registered with the U.S. Securities and Exchange Commission could apply the institutional investor exemption, provided that an acquisition by the foreign investment company meets all other requirements of section 802.64.

If your understanding of our conversation is any different from what I have memorialized in this letter, please contact me at [REDACTED] to discuss this.

Thank you for your very prompt and knowledgeable response to my inquiry.

Sincerely yours,
[REDACTED]

[REDACTED]