

20117
801.11(e)

[Redacted]

[Redacted]

March 9, 1999

[Redacted]

VIA MESSENGER

Patrick Sharpe
Premerger Notification Office
Federal Trade Commission
6th & Pennsylvania Ave., N.W.
Washington, D.C. 20580

RECEIVED
FEB 12 1999
COMMUNICATIONS SECTION

Re: Whether Certain Escrowed Funds of a Venture Capital Fund Are Considered Assets of the Fund for HSR Filing Purposes

Dear Mr. Sharpe:

This is to confirm our discussion last Friday, February 26, about the application of the Hart-Scott-Rodino Act and implementing regulations to a hypothetical acquisition scenario. The hypothetical is as follows:

A group of limited partners are forming a new venture capital fund (the "Fund") which will engage in acquisitions. The Fund is its own parent entity (i.e., no limited partner has the right to receive 50% or more of the profits or of the proceeds upon dissolution), and currently has no assets or regularly prepared balance sheet.

partnership
not reportable

The Fund and Corporation A, a \$100 million person, enter into an agreement to form a joint venture corporation, Newco. Under the agreement, the Fund will contribute in excess of \$200 million to Newco, and will receive a majority interest. Corporation A will contribute the assets of one of its ongoing businesses to

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Newco, and will receive cash (from the proceeds of new debt taken on by Newco and from the Fund's contribution) and a minority interest in the joint venture.

The Fund's contribution to Newco will not be paid directly by the Fund. Instead, prior to closing, the Fund's limited partners will deposit over \$200 million in a bank escrow account established for ERISA purposes. The limited partners are the beneficial owners of the escrow funds. On notice from the general partner of the Fund, money will be transferred from the escrow account directly to Newco in satisfaction of the Fund's obligation under the joint venture agreement. Any funds remaining in the escrow account which are not used for acquisitions revert to the limited partners.

Who does not control Fund

It never flows through Fund even an instant time

My question was whether the money deposited in the escrow account would be considered assets of the Fund, potentially making the Fund a \$10 million person and triggering a filing requirement under section 801.40(b). My understanding of your response is that it would not. Please let me know as soon as possible if my understanding is not correct.

Thank you again for your attention to this matter.

Sir,
[Redacted]

cc: [Redacted]

Limited to this one question asked - the cash is not counted toward the size of Fund. As a result, you do not have a \$10.0mm person and therefore, 801.40 does not apply.

*(PS) called [Redacted] 3/9/99
(RS) concurs*