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WRITER'S DIRECT LINE

[REDACTED]  
(FAX. [REDACTED])

September 7, 1999

**BY FAX**

Richard Smith, Esq.  
Michael Verne, Esq.  
Premerger Notification Office  
Federal Trade Commission  
6th Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Gentlemen,

Thank you for the opportunity last Thursday to discuss the potential applicability of the Hart-Scott-Rodino Act to the facts outlined below. I would appreciate your confirmation that this letter, as revised in accordance with your suggestion, accurately reflects our conversation.

**FACTS**

Company X, a leveraged buyout firm, has organized two funds, Fund A and Fund B, each of which is its own ultimate parent for HSR purposes. Fund A is a \$10 million person while Fund B, which is newly formed, is not.

Funds A and B are both partnerships. Fund A's general partner, which manages the fund, is itself a partnership the general partners of which are individuals who are the principals in Company X. Fund B's general partner is a different (but very similar if not identical) partnership whose general partners are most if not all of the same individuals who are partners in Fund A's general partner.

Funds A and B will be acquiring from Issuer all of a new class of stock which carries the right to elect 2 of Issuer's 13 directors. Fund A will be acquiring approximately 30% of the class, accounting for approximately 5% of Issuer's voting securities, and Fund B will be acquiring the remainder. Fund A cannot on its own elect a director. It is contemplated that the two directors elected

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by the new class will be principals in Company X who are also general partners in the general partnerships which are themselves the general partners of Funds A and B respectively.

ANALYSIS

On these facts, you have advised that Fund A is entitled to claim the investment exemption. The rationale for this advice appears to be that Company X's intent to be actively involved in Issuer's management (including service by two of Company X's principals on Issuer's board) will not be imputed to Fund A -- even where the contemplated board members are general partners of the partnership which is Fund A's general partner -- as long as: (1) Fund A is a separate "person" for HSR purposes; (2) Fund A is acquiring less than 10% of Issuer's voting securities; and (3) Fund A is unable to elect a director on its own.

Please call to let me know if I have accurately reported our conversation.

Sincerely,

[REDACTED]

[REDACTED] AGREE - THIS IS EXEMPT AS SUCH FOR PURPOSE OF INVESTMENT. R. SMITH CONCURS

Michael Verne  
9/8/99