April 7, 1983

[redacted] material may be subject to
[redacted] confidentiality provision of
[redacted] of the Clayton Act
[redacted] release under the
[redacted] Information Act

Dana Abrahamson, Esquire
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Abrahamson:

Confirming our telephone conversations of the last three weeks, the following planned transaction is not reportable under the Hart-Scott-Rodino Antitrust Improvements Act.

[redacted] is a wholly-owned subsidiary of The [redacted], an ultimate parent entity with sales and assets substantially in excess of $100 million. [redacted] proposes to sell certain assets to a newly-formed Delaware corporation, [redacted], in a transaction which will substantially exceed $15 million (aggregating payment made and assumed liabilities). Ownership of [redacted] will be as follows upon closing of the transaction:

[redacted], a natural person, will own 48% of the voting stock. A voting trust for stock owned by [redacted], another natural person, will hold 12% of the voting stock. Mr. [redacted] will have the contractual right to vote all stock held by this voting trust. He will thus own or control 60% of the voting stock. The remaining 40% of the voting stock will be owned by [redacted]. [redacted] will own all of the preferred stock of [redacted]. Upon the happening of certain events of default, [redacted] may be entitled to utilize rights stemming from this preferred stock to elect a majority of the directors of [redacted]. [redacted] would continue to have this right only until the default or defaults were cured.

Under these facts, Mr. [redacted] and only Mr. [redacted] is deemed the ultimate Parent of [redacted]. Though [redacted] may have the contractual right to elect a majority of the board of directors upon the happening of certain contingencies, it has no present right to do so. Neither

Mr. [redacted] nor Mr. [redacted] holds business assets of $10 million or more. The proposed sale of assets by [redacted] to [redacted] is not reportable because Mr. [redacted], [redacted] ultimate parent, is not a $10 Million Person. This is so even though [redacted] expects to have unused lines of credit exceeding $10 million after acquiring the assets from [redacted]. The post acquisition cash availability test for determining a person's size is an informal test which is applied by the Federal Trade Commission only when a newly-formed acquiring entity which is its own ultimate parent has no regularly prepared balance sheets or other financials.

Moreover, the formation of [redacted] is not reportable. Though [redacted] is deemed to be $100 Million Person, neither of the other contributors to the formation of [redacted] -- Mr. [redacted] and Mr. [redacted] -- is a $10 Million Person. [redacted] proposed lenders (which are $10 Million Persons) will not receive any stock of [redacted], and thus are not deemed to be contributing to its formation within the meaning of the Hart-Scott-Rodino Act.

[redacted]

cc: [redacted]

4/8/83

[redacted]

[redacted] —

Received Co Spend Report
Fahr[illegible]

Retention Policy

[illegible]

Pil # —

[redacted] Dir of Economics
[illegible]
[illegible] in 1976
to [redacted] [illegible]
[illegible] [redacted]

[illegible] [redacted]
[illegible] to [illegible]

[redacted]

— considerable anger — but
[illegible] didn't know of
any policy to [illegible]
[illegible] reports

case 4/12/03

[redacted] log duration of this suicide

1. Dials are different
   1. If it not clear that this is the finishing pattern - if not then it not in ordinary course of report to finishing facilities - not a item.
2. Lastly, [redacted] advice says he should draw orange path. It could not possibly rely on the comments to justify what he says on letter.

Unanswered Q's passed by B letter.

1. Is this an existing partnership where B is joining or does the transaction involve the formation of a completely new partnership. The fact that 12% of the interests of A are mentioned seems to indicate an existing partnership is involved where B will join. In either event it seems that A will be the seller. There is no indication that any existing partnership will be selling an interest to B. However it is possible that A is joining B as A's interest in the general partner and existing limited partners are already in the partnership. If the latter is the case it would still be the sale of assets to B as the acquiring person but the partnership would be the acquired person whose assets are being acquired.

2. What is the legal form of the interest to be sold. I assume for purposes of this discussion that it is a transfer of assets. I do not think that a 6% interest in assets is sufficient when an asset transfer where specific assets are identified am I correct?

11/14/ - Conf - 20

R.L. reports on conversation the PTP's

[redacted] case - re allegation that
N is agent from.

* fact confidential unclear [illegible]

* [illegible] of the fact — more fact
— [illegible] [illegible]

* [illegible] A de [illegible]
[illegible] Counsel - not to
[illegible] more
+ we could advise reports [illegible]
that it is an ordinary case

[redacted] - not sufficient

* ?. Nikolay [illegible] — as they
[illegible] factory — [illegible]
A the [illegible] [illegible] — [illegible] the
[illegible] [illegible] [illegible] C.C.C.

* ?. [illegible] [illegible] [illegible] [illegible] [illegible]

[redacted] Bielinsky [illegible]

[redacted] [illegible] - [illegible] [illegible] for fact
[illegible] -4

* [illegible] [illegible] [illegible] - [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

[redacted] Letter 4/12/83 analysis by WEK.

(B) wants acquire (A)'s "interest" in a pool of assets that contains properties (oil + gas) in the development stage i.e. undeveloped properties.

Presumably there are producing properties.

Assuming that the type of persons and transaction here are patterned the question is whether the fact that B will immediately (as part of the same transaction?) transfer the properties into a predecessor joint venture takes the transaction out of the status as a tax-free transaction.

Another question is whether the fact that A takes into account numerous transactions involving non producing properties in the "ordinary course of business" would permit this transaction involving producing properties to be viewed as a sale in the "ordinary course of business".

I suggest in the letter case we should advise the [redacted] that we cannot be sure that it is in the C of C since the letter represents the transaction to be different than prior transactions and this not ordinary.

As to the C of the transaction being exempt as part of the formation of a non-taxable joint venture I suggest that the form does not govern the substance in this case and I would be

[redacted]

required as reportable even though the subsequent transfer + proceeds is non-reportable. As the letter indicates the client can arrange the form to avoid reportability by requiring the (B) to put the money into the purchased duplex title + take that property as security. A friend of his suddenly the proceeds are acquired from (A) or from (B) [illegible] I believe the Code + also indicates that the acquisition is from A. The 8 would report as the acquiring person and A would report as the acquiring person. It would appear to be an acquisition of assets via liquidation as an acquisition of the interest of A.

[redacted] 4/12/83.

[redacted]

W/C/B [redacted]

Reading NS

1977 - Previous figures.

0 - Number they included
77 figures for comparison
with the earlier 1982
- Disclosure of the last balance
sheet + how it had been
to include in 77 figures