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May 31, 2000

FEDERAL TRADE  
COMMISSION  
MEMBER INFORMATION  
OFFICE  
MAY 31 10 24 AM '00

Nancy Ovuka, Esquire  
Federal Trade Commission  
Washington, D.C.

Via facsimile to: (202) 326 2624

Re: Letters from [redacted] dated May 15, 2000 and May 22, 2000

Dear Nancy:

Further to the telephone conversation of May 24, 2000, among you, [redacted], this is to confirm our understanding that the Federal Trade Commission has concluded that no pre-merger notification report is required under the Hart-Scott-Rodino Act in connection with the sale from Entity A to a trust (the "Trust") of the limited liability company member interests issued by the partners of a partnership (the "Partnership") and the lease by the Partnership to Entity B of all of its assets pursuant to a "synthetic lease," as described in the May 15 letter referenced above, and as further described in our telephone conversation. Capitalized terms used in this letter without definition, are used as defined in the May 15 letter.

As outlined by [redacted] on the phone, in addition to the facts described in the May 15 letter, the Lessee will be appointed as agent of the Trust for various purposes, including to determine whether the conditions to closing have been met under the purchase agreement between the Trust and Entity A, and to construct, maintain and operate the assets owned by the Partnership. During the term of the Lease, the Lessee will be responsible for rental payments equal to the interest and dividend payments made by the Trust on the loans and equity investments made to the Trust. The Lessee will have the option to purchase either the member interests or the underlying assets by repaying the principal amount of the loans and equity investments plus accrued and unpaid interest and other charges owing under the synthetic lease documents (the "Option Price"). If at the end of the lease the Lessee does not exercise the option, the Lessee is required to pay the Trust an amount equal to approximately 85-90% of the Option Price and the Partnership will sell the property to a third party. The sale proceeds would be applied first to pay any portion of the Option Price not paid by the Lessee, and the excess, if any, would be remitted to the Lessee.

Subsequent to our conversation last week, further discussions were held between Entity B and the entity providing the lease financing regarding the obligations of the Lessee in the event of a casualty loss or condemnation of the Partnership assets, environmental occurrences and events of [redacted]

[REDACTED]

Nancy Ovuka, Esquire  
May 31, 2000  
Page 2

default under the lease. In the event of a casualty loss or condemnation prior to the completion of construction of the Partnership assets, the Lessee has the ability to terminate the lease without further liability. Following the completion of construction of the Partnership assets, if there is a casualty loss or condemnation, either the Lessee or the Partnership may terminate the lease, in which event, the Lessee would be required to exercise the purchase option and pay 100% of the Option Price. If at any time, certain events of default or environmental events occur, the Partnership may terminate the lease, and the Lessee would be required to exercise the purchase option and pay 100% of the Option Price.

Our understanding is that the acquisition by the Trust of the member interests is not a reportable transaction because the acquisition is in connection with a lease financing that is exempt from the reporting requirements of the Hart-Scott-Rodino Act pursuant to 16 CFR §802.63. We further understand that prior to the exercise of the option under the synthetic lease, the rights and obligations of the Lessee under the synthetic lease and the related documents are not an "acquisition" of the leased assets for purposes of the pre-merger notification requirements of the Hart-Scott-Rodino Act because the Trust retains legal and beneficial ownership of the assets that are the subject of the lease. In determining that the Trust retains beneficial ownership of the Partnership assets during the term of the lease, we understand that you are relying on the fact that the lease does not allow the Lessee to become the owner of the Partnership assets without the payment of the Option Price and that if the option to purchase the Partnership assets is exercised, consideration would need to be given as to whether a pre-merger notification filing would be required by the Lessee prior to the transfer of ownership of the Partnership assets to the Lessee.

Again, we sincerely appreciate your time and attention to this matter. If we have in any way misunderstood your advice, please let us know. Should you need anything further from us in this regard, please do not hesitate to contact [REDACTED]

Very truly yours,

[REDACTED]

[REDACTED]

[REDACTED]