

...the confidentiality provisions of section 11 of the Act...

November 22, 1983

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FEDERAL TRADE COMMISSION RECEIVED INFORMATION OFFICE

Federal Express

Dana Abrahamsen, Esq.
Federal Trade Commission
Sixth Street at Pennsylvania Avenue NW
Room 313
Washington, D.C. 20580

Re: Hart-Scott-Rodino Antitrust
Improvements Act of 1976,
as amended (the "HSR Act")

Dear Dana:

This will confirm the telephone conversation on November 14, 1983 involving you, me and several other persons regarding a proposed acquisition of certain assets (the "Business") of a corporation (the "Seller") by a newly-formed limited partnership (the "Partnership") of which a newly-formed corporation (the "GP") will be the general partner.

As was discussed, the acquisition can be summarized as follows:

The GP has recently been formed by a financial services corporation (the "Corporation") which will hold 100% of the GP's voting securities (which will represent approximately 35% to 45% of the GP's equity) and several individuals (who now, and will continue to, manage the Business; the "Individuals") who will hold all of the other securities of the GP (which will represent approximately 55% to 65% of the GP's equity). The GP will have less than \$10,000,000 in assets and has no revenues. The Corporation has annual revenues and total assets in excess of \$100,000,000, each. However, we understand that neither the annual income nor the total assets of any of the Individuals exceed \$10,000,000.

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The GP and a limited partner (which may be an affiliate of the Corporation) will form the Partnership for the purpose of acquiring and operating the Business and will infuse capital and obtain loans for the Partnership in an aggregate amount which exceeds the purchase price of the Business by less than \$10,000,000, the excess to be used as working capital.

The Partnership will acquire the Business from the Seller for a purchase price which exceeds \$15,000,000. The Seller is a wholly-owned subsidiary of a diversified corporation with annual revenues and total assets in excess of \$100,000,000, each. After the acquisition, the Partnership intends to sell limited partnership interests to a limited number of private investors.

Based upon the foregoing, you have advised us that:

1) The Corporation and the Individuals can form the GP without the necessity of filing of a premerger notification form and observing the waiting period.

2) The Partnership can acquire the Business from the Seller without the necessity of the filing of a premerger notification form and the observing of the waiting period by any of the Partnership, the Seller, the parent of the Seller, the Individuals, the Corporation or the GP.

In addition, you have advised us that your foregoing conclusions are based, among other things, on the following:

A partnership is its own ultimate parent entity ("UPE") and there is no group concept under the HSR Act, as there is, for example, under Section 13 of the Securities Act of 1934. Therefore, the acquisition of assets by a partnership will not be attributed to any one or more of its partners individually or in the aggregate (except as the Partnership) for any purpose under the HSR Act. This is true, providing the requisite business purpose exists, even if (a) the partnership acquires such assets at a time when its partners are prohibited from doing so themselves without

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filing a premerger notification form and observing the waiting period; (b) the partners infuse funds into the partnership to acquire such assets and (c) the partnership is formed to acquire such assets.

A partnership with assets of less than \$10,000,000 as at the time of its latest regularly prepared balance sheet and a partnership formed for the purpose of making an acquisition are both exempt from complying with the filing and waiting period requirements of the HSR Act. A newly-formed partnership must prepare, as at the date that it makes an acquisition, a balance sheet, which for the purpose of determining (a) whether the acquisition satisfies the Size of the Transaction Test, would include all of the partnership's assets, and (b) whether the partnership satisfies the Size of the Person Test would not include assets which were (or were committed to be) infused into the partnership for the purpose of making the acquisition. All of such funds need not be infused into the partnership at one time. Other than as set forth above, there is no specific time at which a UPE must prepare a balance sheet, but an UPE may not fail to prepare a balance sheet in order to perpetuate its status as an exempt entity.

As a result of the foregoing, provided the funds have been (or will be) infused for the purpose of making a particular acquisition, and until a partnership is required to have a regularly prepared balance sheet showing assets in excess of \$10,000,000, a partnership which (a) is newly formed, is exempt from complying with the filing and waiting period requirements of the HSR Act regardless of the amount of its equity and (b) has assets of less than \$10,000,000 as at the date of its latest regularly prepared balance sheet and is funded with, for example, an additional \$100,000,000 in cash and/or unconditional obligations of its partners (old and new) to contribute cash to its capital, is likewise exempt from complying with the filing and waiting period requirements of the HSR Act.

In addition, any combination of the scenarios of the preceding paragraphs will cause a result consistent with the results described in those paragraphs.

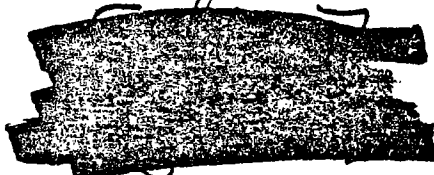
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The absence of a legitimate business purpose will render unavailable to the UPE the benefits described herein. However, there exists a broad range of legitimate business purposes which may be available to an UPE whose purpose is not solely to avoid the application of the HSR Act, including a desire (a) to achieve certain tax results and/or (b) to obtain additional funds (whether existing in, or obtainable by, the partnership) and/or (c) the participation of additional investors (whether on the same or different terms as other investors).

As you may recall, in the past, I have discussed various aspects of the HSR Act with you and other attorneys at the FTC. Certain of the conclusions contained in this letter are based upon one or more of those conversations and the related correspondence and this letter is intended to supplement rather than supersede such correspondence.

Thank you again for your time and your help.

Very truly yours,

A large, dark, rectangular redaction mark covers the signature area of the letter.