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[redacted]

May 15, 1984

Wayne E. Kaplan, Esquire
Premerger Notification Office
Federal Trade Commission
Washington, D.C. 20580

[redacted]

Dear Mr. Kaplan:

On the basis of our telephone conversation last Thursday, I thought I might add a few thoughts to supplement [redacted] April 11 letter requesting an informal interpretation that investments in the [redacted] do not constitute potentially reportable acquisitions of voting securities under § 7A of the Clayton Act.

You will recall that the reason for nonreportability suggested by [redacted] as that [redacted] invests only in foreign debt instruments, the direct acquisition of which would always be exempt under § 7A(c)(2). Individual investors in [redacted] which is [redacted] organized as [redacted] are issued investment "units," which evidence their ownership interest in the trust. Since the terms of these units provide for redemption by the trust at the option of the unit holder, the trust itself is revocable by the "settlors" of the trust. Under § 801.1(c)(3) the unit holders therefore hold all of the debt instruments constituting the corpus of the trust. The "acquisition" of additional units through an additional investment in the [redacted] results only in the investor's holding of pro rata interest in debt instruments, a transaction which is exempt under § 7A(c)(2).

During our recent telephone conversation, you suggested some possible uneasiness with the request because of uncertainty as to the impact of the requested interpretation on other kinds of entities and transactions. Under our interpretation, what ultimately makes investments in the [redacted] nonreportable is the fact that [redacted] invests

only in straight debt instruments, the direct acquisition of which would be exempt for any purchaser. If this trust or any other revocable trust were to hold assets or voting securities the direct acquisition of which would be subject to § 7A, the requested interpretation would not result in any exemption. Thus the only premerger notification filings which the interpretation would exempt are those relating to the indirect acquisitions where the direct acquisition would be already clearly exempt.

During our conversation, I agreed to provide you with further information as to the burden which requirement of premerger notification filings would impose. This issue has been specifically raised and discussed with both present and prospective investors in the [redacted]. These discussions have confirmed our fear that potential investors might be deterred from investing in [redacted] because of the filing and waiting period requirements. This, of course, would adversely affect the competitive position of the [redacted]. Competition among a number of funds offering similar investment opportunities is significant, and [redacted] is a newcomer to this field.

Although the investors are often large, sophisticated companies, it is the financial people within those companies, rather than the executives and the antitrust lawyers, who are typically responsible for making investment decisions. Yet all of them are inevitably involved in any decision which results in a premerger notification filing requirement, as well as in the preparation and filing of the form itself. Thus there is a significant, practical cost to requiring notification as a prerequisite to making or adding to a large investment, which the [redacted] believes would adversely affect its competitive position in the marketplace.

That situation is particularly problematic for a newcomer like [redacted] since its larger competitors normally do not have a similar requirement. The reason for this anomaly is that notification is required only in those situations where a specific investor is unable to take advantage of the "investment purpose" exemption in § 7A(c)(3). In the case of [redacted] that occurs only when an investor's holdings would exceed 10% of the outstanding units issued by [redacted]. Of course, the larger the investment vehicle, the more can be invested before the individual investor's holdings reach 10%. Thus it is the smaller competitors in this field, like [redacted] which have the problem and the resulting competitive disadvantage.

[redacted]



Since we all are agreed that the Commission and the Department of Justice have no conceivable enforcement interest either in [redacted] purchases of straight debt instruments or in individual companies' investments in [redacted] hope that your group can give us an informal indication that these investments are not covered by § 7A filing requirements.

As I suggested in a previous conversation with you, there is some urgency to our request, because [redacted] may be issuing financial statements for the period ending May 31. Those financials will show [redacted] to have assets of more than $10 million for the first time. The financials must be issued within sixty days after the close of the period which they cover.

If I can provide you with any further information, please let me know. Thank you for your assistance.

Sincerely yours,

[redacted]

5/16/84.

John.

[redacted] This is the supplement to letter

It is necessary that we get together and discuss how we might deal with this matter.

Please ~~let~~ let me know when you are available. We should probably have a staff meeting on this with Bob's participation.

Thanks.
Wayne.