

December 11, 1984

BY TELECOPY

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Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20036

Dear Mr. Abrahamsen:

This letter confirms the informal advice you rendered during our telephone conversation on December 5, 1984. During that conversation, I presented the following hypothetical:

Corporation holds 75% of the voting securities of Subsidiary. Investor A holds the remaining 25% of Subsidiary's shares. Corporation, itself, is controlled by X, an individual who holds 100% of the common shares of Corporation. Investors B, C and D each holds preferred shares in Corporation. X now intends to convert Corporation and Subsidiary into partnerships, with himself as general partner. Accordingly, X intends to take the following steps:

1. Form Partnership 1. In connection with its formation, this company would transfer its partnership interests to Subsidiary. In exchange, it would receive all the assets of Subsidiary. After these transactions have occurred, Investor A's voting securities in Subsidiary would be converted into a right to receive a limited partnership interest in Partnership 1. The limited partnership interest in Partnership 1 (now held by Subsidiary) would be distributed to Investor A. Subsidiary would retain the general partnership interest in Partnership 1.

2. Corporation would liquidate Subsidiary and therefore, the general partnership interest in Partnership 1 held by Subsidiary would become an asset of Corporation.

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3. X would form Partnership 2. In connection with its formation, Corporation would transfer all of its assets (including the general partnership interest in Partnership 1) to this company in exchange for its partnership interests. After this transfer, the stock held by Investors B, C and D in Corporation would be converted into the right to receive a limited partnership interest in Partnership 2 (or cash) and the limited partnership interests in Partnership 2 would be distributed. Corporation would retain the general partnership interest in Partnership 2.

4. X would liquidate Corporation and remain general partner of Partnership 2.

Advice:

On the basis of these facts, you agreed that no filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("Act") would be required for the following reasons:

Step 1

Neither the formation of Partnership nor the exchange of its partnership interests for the assets of Subsidiary require filing. These transactions are made in connection with the formation of Partnership 1. Rule §801.40 exempts from the Act's reporting requirements any acquisition made in connection with the formation of a partnership. (This is so even if Partnership 1 has \$10 million or more in assets at the time of its formation and all other jurisdictional criteria under the Act are satisfied.)

The fact that all partnership interests in Partnership 1 are first transferred to Subsidiary before being distributed does not change this analysis. Even if it did, the exchange still would be exempt. Since X would control both Partnership 1 (which, under this approach, would not become a true partnership until Investor A "acquired" its limited partnership interest) and Subsidiary, the creation of the former and the transfer of assets between the two companies would be exempt under §802.30 as an intra-person transaction. The distribution of the limited partnership interest to Investor A is exempt because the acquisition of a partnership interest is exempt (so long as it is not the acquisition of all partnership interests in the entity) and the acquisition, by Subsidiary, of Investor A's voting shares (through the exchange) also is exempt, under Rule §802.30.

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Step 2

The liquidation of Subsidiary into Corporation is exempt under §802.30.

Step 3

For the reasons outlined in step 1, this transaction is exempt.

Step 4

Since X controls Corporation by reason of his holding of its voting securities, this transaction is exempt under §802.30.

I believe this letter accords with the informal advice you rendered during our telephone conversation. If it does not, please contact me as soon as possible.

Thank you.

Sincerely

OK upon review
by WCK
3/9/87

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