801.1

[redacted]

March 9, 1988

Mr. Wayne Kaplan
Premerger Notification Office
Federal Trade Commission
Sixth St. & Pennsylvania Ave., N.W.
Washington, D.C. 20580

VIA TELECOPIER

Dear Mr. Kaplan:

Confirming our telephone conversation of March 8, 1988, the following transaction would not be subject to the 30-day waiting period or premerger notification reporting requirements of the Hart-Scott-Rodino Act.

A. The Parties.

X is a corporation with sales substantially in excess of $100 million. A and B are investment limited partnerships. No person or entity has the right to receive 50% or more of the profits (or in the event of dissolution, the assets) of either of them. Accordingly, A and B are their own "ultimate parent entities" within the meaning of Rule 801.1(a)(3). A and B each "control" sales or assets of more than $10 million but less than $100 million.

A and B have different partnership entities as their respective general partners. Y is a natural person who has been designated by each of the general partners of A and B, pursuant to written partnership agreements, to vote stock in third party corporations which is held by A and B. Y holds this right pursuant to appointment by Z, the partnership which employs him (and in which he is a major but less than controlling equity holder), and not in his own name. As a real-world matter, Z controls each of A and B and their respective managing general partners.

B. The Transaction.

Z has agreed to make a leveraged buy-out of certain assets of X, utilizing A and B as indirect acquisition vehicles, on the following terms. A new corporation [redacted] will be formed. Approximately 41% of [redacted] stock will be issued to A in exchange for a capital contribution of approximately $4 million. Approximately 10% of [redacted] stock will be issued to B in exchange for a capital contribution of approximately $1 million. [redacted] will obtain a loan from a third party for approximately $60

million, to be secured by [redacted] assets. Neither A nor B will guarantee that loan. X will sell the target assets to [redacted] in exchange for (a) approximately $60 million in cash (depending on the net book value of the assets at the time of transfer), (b) a note for $22 million, and (c) 49% of the stock of [redacted]. The parties have agreed that X will be deemed to make a capital contribution of $4.804 million to [redacted]. We understand that the Board of Directors of X will determine in good faith that $4.804 million is the fair market value of the stock X will receive in [redacted] given the substantial debt of that entity. Stock in [redacted] will be split between A and B for good business reasons, and not as a means of avoiding jurisdiction under the Hart-Scott-Rodino Act.

C. Analysis.

The shares which A and B will hold in [redacted] will not be aggregated for Hart-Scott-Rodino Act purposes because A and B are not under common "control" within the meaning of Rule 801.1(b). Moreover, even though Y, as the designee of Z, will have the contractual power to designate 50% or more of [redacted] directors, under Rule 801.1(b), [redacted] will not be deemed to be "controlled" by Y because Y holds the contractual voting rights as a nominee and not beneficially. Accordingly, [redacted] is its own "ultimate parent entity." Under Rule 801.1, [redacted] will not be deemed to be a $10 million person because monies loaned and contributed to it will be used to make the acquisition. Therefore, even though X is a $100 million person and will receive in excess of $15 million for the sale of certain assets, the sale of assets will not be reportable because the buyer will not meet the $10 million "size of person" test.

The formation of [redacted] is exempted by Rule 802.20 from the reporting requirements of Rule 801.40, even though a $100 million person and two $10 million persons will contribute to its formation, because no contributor will contribute $15 million or more, and because no person will receive 50% or more of [redacted] stock.

Please call me to confirm that you have received this letter and to advise whether after seeing the above facts in print, you continue to believe that the transaction is not reportable.

Yo[redacted]

I indicated the writer that Y appears to be the agent of Z + Z controls [redacted] + has to file to acquire Wang et al.
[redacted] K. Wayne Kaplan 3/11/88

[redacted]