801.40
+ 801.1

April 1, 1988

BY HAND

Wayne E. Kaplan, Esq.,
Federal Trade Commission,
6th and Pennsylvania Ave., N.W.,
Room 315,
Washington, D.C. 20580.

Dear Wayne:

By this letter I request confirmation of advice you conveyed to me by telephone on February 3, 1988 regarding the reportability of a transaction under the Hart-Scott-Rodino Act. The transaction that was the subject of my inquiry was described to you as follows:

> Company A will contribute a newly-developed office building, a newly-opened hotel, and related assets ("the property development") to a newly-formed partnership in exchange for a 50 percent interest in the partnership. Company B* will contribute $56.5 million to the partnership in exchange for the other 50 percent interest. Shortly after formation of the partnership, Company A will receive a cash distribution from the partnership of approximately $56 million. However,

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* Company A and Company B are both $100 million persons within the meaning of Section 7A(a)(2).

it will continue to own a 50 percent interest in the partnership.*

I reasoned that under the Premerger Notification Rules, the formation of a partnership is not a reportable event. See, e.g., 43 Fed. Reg. 33,487 (July 31, 1978). Similarly, the distribution of cash from a partnership is not reportable. Although the proposed transaction is not technically reportable, I sought your advice because it could be viewed as a sale by A of 50 percent of the property development to B, and the staff could conceivably argue that the transaction is an avoidance device within the meaning of § 801.90.

You advised me that the staff had considered this issue in connection with last spring's rules changes affecting partnerships. You explained that thought was given to changing the rules or interpreting them in such a way as to make transactions similar to this one reportable, but that position was ultimately rejected. You said the staff had decided that filings in these circumstances were unnecessary for two reasons: 1) most transactions involve real estate or other kinds of partnerships that raise no antitrust issues; and 2) a filing is required if one partner buys out the other.

I will continue to rely on your prior advice that the above-described transaction is not reportable unless I hear from you to the contrary prior to April 13. Please do not hesitate to call me [redacted] if you have questions about this transaction or if I have misunderstood your advice in any way.

Thanks again for your attention to this matter.

Sincerely,

[redacted]

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* We did not discuss whether the transaction might be exempt as a transaction in the ordinary course of business.

Confirmed that the 1987 amendment to the control rule did not change the position in § 801.40, i.e., that the formation of noncorporate joint ventures are not reportable. Facts in this case however, raise § 801.90 avoidance questions. Ao writer to submit a letter explaining the reasons for this structure and transaction