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May 19, 198[redacted]

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BY HAND

Wayne Kaplan, Esq.
Premerger Notification Office
Federal Trade Commission
Sixth Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Kaplan:

During a telephone conversation earlier today, I described a proposed partnership liquidation, and asked whether the liquidation would be reportable under the Hart-Scott-Rodino Antitrust Improvements Act (the "Act"). You stated that it was your view that the liquidation would not be reportable.

I am writing this letter to confirm my understanding of your conclusion. What follows is a description of the relevant facts and my analysis of the facts.

A. Facts

Partnership X has five partners. The partners include an individual P1, corporations C1 and C2, and trusts T1, T2 and T3. None of P1, C1, C2, T1, T2 and T3 are within the same person for the purposes of the Act. P1 and C1 each have 20% interests in the profits and losses of Partnership X; C2, T1, T2 and T3 each have 15% interests in the profits and losses of Partnership X.

Partnership X has assets with a book value and fair market value of approximately $20 million. The assets consist of voting securities of two corporations. Specifically, X has

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approximately 1% of the voting securities of Corporation M1, with a book value and fair market value of approximately $20 million, and 100% of the voting securities of Corporation M2, with a negligible book value and fair market value. All of the partners have assets with a book value in excess of $100 million. M1 has more than $100 million in assets; M2 has negligible assets.

Partnership X proposes to dissolve and distribute its assets to its partners in accordance with their interests. As a result of this transaction, P1 and C1 would each receive voting securities in M1 and M2 with a total fair market value of approximately $4 million. More precisely, they would each receive 0.2% of the stock of M1 with a fair market value of approximately $4 million, and 20% of the stock of M2 with a negligible fair market value. C2, T1, T2 and T3 would each receive voting securities in M1 and M2 with a total fair market value of approximately $3 million. More precisely, they would each receive 0.15% of the stock of M1 with a fair market value of approximately $3 million, and 15% of the stock of M2 with a negligble fair market value. None of the partners would control any stock of M1 before the liquidation.

B. Analysis

For the purposes of the Act, each of the partners would be viewed as an acquiring person, and Partnership X would be viewed as an acquired person. None of the distributions by Partnership X to the partners would be reportable, however. Although the size-of-person test would be satisfied with respect to each distribution, the size-of-transaction test would not be satisfied. Each of the partners would be receiving assets of Partnership X -- the voting securities -- with a fair market value less than $15 million. In any event, these transactions would not be reportable by virtue of 16 C.F.R. 801.21(b).

Under the Act, since each of the partners is acquiring voting securities of M1 and M2, M1 and M2 would also be viewed as acquired persons. The acquisition by the partners of voting securities in M1 and M2 would not be reportable on this basis, however. With respect to M1, although the size-of-person test would be satisfied, the size-of-transaction test would not be satisfied. Each of the partners would be acquiring less than 15% of the voting securities of M1 with a fair market value less than \$15 million. With respect to M2, the size-of-person test would not be satisfed. In addition, the size-of-transaction test would not be satisfied. Although each of the partners would be receiving at least 15% of the voting securities of M2, they would not be acquiring voting securities with a value of \$15 million or more. See 16 C.F.R. 802.20.

The analysis would not change if Partnership P were liquidated at a time when it held \$175 million in cash in addition to the voting securites described above. Under 16 C.F.R. 801.21(a), cash distributed to the partners would not be taken into account in determining whether the size-of-transaction test had been satisfied.

The analysis would change if any of the partners were receiving voting securities with a total value in excess of \$15 million. Thus, for example, if Partnership P held voting securities of M1 with a book value and fair market value of \$120 million, so that P1, C1, C2, T1, T2 and T3 would be receiving voting securities worth \$24 million, \$24 million, \$18 million, \$18 million, \$18 million and \$18 million, respectively, the distribution to each partner would be reportable. Specifically, the transactions in which each partner is viewed as an acquiring person, and M2 is viewed as an acquired person, would be reportable.

* * *

The parties plan to consummate the liquidation transaction very soon. Thus, I would appreciate it if you would let me know whether you spot any [redacted]s analysis before May 26, 1988. You may call me a[redacted]ou have any questions or comments. If I do not [redacted] from you before May 26, I will assume that you agree with the analysis set forth in this letter.

Very truly yours,

[redacted]

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Wayne Kaplan 5-20-88