802.63

[redacted]

June 6, 1989

VIA HAND DELIVERY

Mr. Patrick Sharpe
Federal Trade Commission
Sixth & Pennsylvania Ave., N.W.
Room 303
Washington, D.C. 20580

Dear Patrick:

This confirms our telephone conversation yesterday in which you advised that the following fact pattern does not create a filing requirement under the Hart-Scott-Rodino Act. Note assuming all size thresholds are met

A & B are the only partners in 3 partnerships. A portion of B's interest in the partnerships was financed by a credit agreement with A. B is now suffering serious financial problems and is in default under the terms of the credit agreement. B is also in default under the terms of the partnership agreements because of its failure to pay its share of the partnerships' operating costs.

As part of a bona fide debt work-out, A proposes to acquire B's interest in the 3 partnerships. A will then hold all of the interest in the partnerships. On occasion, A has entered into credit agreements similar to the present one with other parties, but is not a bank or any other sort of financial institution.

No aspect of the transaction, including the credit agreement, has been used as a device to avoid compliance with the Hart-Scott-Rodino Act.

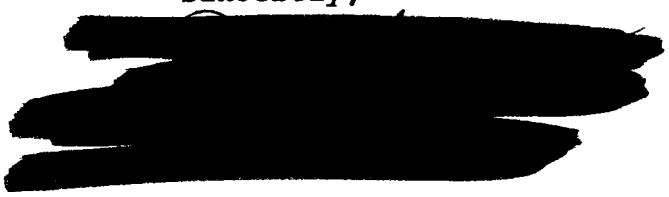
Based on the foregoing facts, you advised that A's proposed acquisition of B's interest in the 3 partnerships would be exempt from the requirements of the Hart-Scott-Rodino Act pursuant to 16 C.F.R. § 802.63(a) (Acquisitions by Creditors.)

Note: If not involved in Banking, Finance or Insurance.

Please let me know whether the foregoing accurately states the view of the Premerger Office.

Thank you.

Sincerely,



I advised [redacted] to send in a letter concerning this matter because it seemed to me it should be open to discussion.

At one time I read section 802.63 narrowly to mean that it can only apply if it is in the ordinary course of business of the acquiring person (insurance, banking, finance companies). Yet, I seem to recall that Wayne Kaplan told me that section 802.63 should be read loosely to cover any company involved in a bonafide-debt-workout. As a result, I gave the advice shown in the letter. wrong

I think this advice is wrong. Section 802.63 should be read to mean just what was written. The transaction should be in the ordinary course of business. I think the rules and the statement of basis and purpose support this position. Please let me have your view on this matter.

called [redacted]
6-8-89 and advised
him to file under HSR
The initial advice was
wrong.