January 2, 1991

Richard B. Smith, Esquire Premerger Notification Office Federal Trade Commission Room 312 6th & Pennsylvania Avenue, N.W. Washington, D.C. 20580

Dear Dick:

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This letter serves to confirm our telephone conversation of Tuesday, December 4, 1990. During that conversation, you agreed that based on the facts I provided, the transaction described below was not reportable. The facts we discussed are as follows:

Companies A & B, which control respectively, Partnerships C (a partnership to be formed) and D, are to exchange partnership interests in their partnerships. Company A will acquire a 1% interest in Partnership D from Partnership D, which is controlled by Company B, for the payment of \$5 million cash. Company A will also receive a \$10 million note from Partnership D which is convertible into a 9% interest in Partnership D. The consideration for the \$10 million convertible note is Company A's transfer to Partnership D of a 30% interest in Partnership C which Company A controls.

Partnership D's acquisition of the 30% interest in Partnership C will be accomplished as follows:

Company A will transfer a 30% interest in the intangible assets of one of its business units ("the unit") into a subsidiary which will transfer the assets to Partnership D. Company A will contemporaneously transfer a 30% interest in the tangible assets of the unit directly to Partnership D. Company A and Partnership D will then contribute their 70% and 30% interests in the unit assets to newly formed Partnership C in exchange for 70% and 30% interests in Partnership C.

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Partnership D will be contractually committed to contribute the 30% interest in the assets which it receives from Company A and its subsidiary to the formation of Partnership C. The transfer of the assets to Partnership D and their subsequent contribution to the formation of Partnership C will likely occur on to same day, and in any event, will occur within a short period of time.

Given the facts set out above, it is my understanding that the Federal Trade Commission's Premerger Notification Office does not view the transfer of the 30% interest in the assets of the unit to Partnership D as reportable given that this is just an intermediate step in the partnership formation and exchange. I understand your caution that if Partnership D does not fulfill its contractual commitment to contribute the assets to Partnership C that a reportable transaction could occur without having been reported. I understand that this would potentially subject each of the companies and partnerships to the penalties provided under the Hart-Scott-Rodino Notification Report Act of 1976 15 U.S.C. § 18a ("the Act"), and I have so advised the parties.

If this letter does not correctly reflect our conversation or mischaracterizes the view of the Premerger Notification Office, please contact me immediately. Unless I hear to the contrary by January 4, 1991, I will advise my client to rely on your advice that no reporting obligation arises.

Very truly yours,

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