

Partnerships  
901.1(b)

[REDACTED]

BY OVERNIGHT COURIER

September 15, 1992

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Bureau of Competition  
Federal Trade Commission  
Room 303  
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Washington, D.C. 20580

SEP 15 11 31 AM '92  
FEDERAL TRADE COMMISSION  
PREMERGER NOTIFICATION OFFICE  
WASHINGTON, D.C. 20580

RE: Hart-Scott-Rodino Act Interpretation

Dear Mr. Sipple:

Thank you for your assistance in our phone conversation yesterday in providing the Premerger Office's position regarding the Hart-Scott-Rodino Act ("HSR") and the Commission's implementing rules ("Rules"). I am writing to confirm my understanding of that position, and to provide further details of the facts involved in the transactions that generated my inquiries.

**TRANSACTIONS BACKGROUND**

[REDACTED] is contemplating increasing, through a series of acquisitions, its interests in three separate partnerships in which [REDACTED] currently is a partner. The partnerships operate the same line of business, but in different geographic areas within the same state. A wholly-owned [REDACTED] subsidiary will make the acquisitions.

One of the proposed transactions poses the question of the appropriate treatment under HSR of the acquisition of multiple partnership interests that result in the acquiring firm holding 100% of the partnership's interests. If the transaction itself otherwise is reportable, [REDACTED] must resolve whether it should file as both an acquiring and acquired person, or simply as the former.

Most of the numerous interests to be acquired are partnership interests. However, some interests will be acquired through [REDACTED] purchase of 100% of the voting securities of subsidiaries of three unaffiliated entities, which in turn hold the partnership interests to be transferred to [REDACTED]. These three corporate entities whose stock [REDACTED] will acquire own no assets other than the partnership interests, and control no other entities.

In two partnerships, after the acquisitions [REDACTED] will continue to hold less than 100% of the partnership interests. Some selling entities hold interests in two or all of the three partnerships.

This material may be subject to the confidentiality provisions of the Hart-Scott-Rodino Act.

[REDACTED]

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In the third partnership involved, [REDACTED] is the general partner and in a series of transactions will increase its interest from approximately 70% to 100% ("100% Partnership"). [REDACTED] will do so by purchasing partnership interests held by five separate entities, and by purchasing all of the voting securities of a sixth entity that is the remaining partner ("Stock Partner"). The Stock Partner also owns a partnership interest in the other two partnerships mentioned above. Accordingly, [REDACTED] purchase of 100% of the Stock Partner's securities also will result in [REDACTED] acquiring interests in those two partnerships as well. The Stock Partner has no assets other than these three partnership interests.

It is unclear at present whether the fair market value (FMV) of the total assets of the 100% Partnership will exceed \$ 15 Million. It is possible their FMV may be under \$ 15 Million, presuming the purchase price paid for the additional 30% interest is an accurate gauge. At closing, [REDACTED] also may assume responsibility for certain capital calls, issued but unpaid, for which the selling partners otherwise would be liable to the partnership.

[REDACTED] will acquire the Stock Partner's voting securities for approximately \$ 4-5 Million. [REDACTED] will acquire the other two issuers' stock for well under \$ 5 Million. The Stock Partner and the other two issuers of the voting securities to be acquired each have annual net sales and total assets of less than \$ 25 Million.

#### PREMERGER OFFICE INTERPRETATION

I understand that, as the Premerger Office interprets the HSR Act and the Rules, the acquisition of a partnership interest ordinarily is not a reportable event. The sole exception exists where -- as in the 100% Partnership here -- as a result of the acquisition the acquiring person will hold 100% of the partnership interests. In that event, the acquiring person is deemed to have acquired 100% of the partnership's assets. Further, it is your interpretation that in this situation the 100% Partnership itself -- and not any of the selling partners -- is the "acquired person" for HSR purposes.

Under the Rules, [REDACTED] must value the 100% Partnership's total assets (not net of liabilities) to ascertain whether the acquisition meets the HSR Size-of-Transaction test. If the FMV of those assets is greater than \$15 Million, the transaction would meet that filing criterion. If the purchase price of the acquired interests is used to determine FMV of the 100% Partnership's assets, that price should include all other non-cash consideration [REDACTED] pays. This would include liabilities of the selling partners

