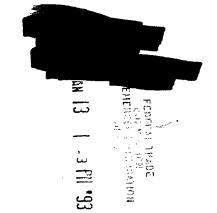
802.63



January 13, 1993

Ms. Nancy Ovuka United States Federal Trade Commission Washington DC 20580

Re: Application of Creditors Exemption (16 C.F.R. §802.63) from Notification Requirement of the Hart-Scott-Rodino Antitrust Improvements Act of 1976

Dear Ms. Ovuka:

This is to confirm your advice of January 11, 1992 with respect to the applicability of the creditors exemption from the notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") provided by 16 C.F.R. §802.63.

The situation we discussed is as follows:

- firm which is in the business of making

 Creditor has assets

 In excess of \$100,000,000.
- 2. Creditor has loaned money to, and made in, two related ventures, namely rartnership A and Partnership B. Schedule A attached hereto is a schematic diagram of Creditor's interests in the Partnerships.

PARTNERSHIP A

3. Partnership A is engaged in commerce other than manufacturing. It has assets in excess of \$15,000,000 but less than \$100,000,000.

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- 4. The general partner of Partnership A is Corporation A and the limited partner of Partnership A is Corporation A. Corporation A is entitled to 99% of the profits of Partnership A following the return of the capital invested in Partnership A by Corporation A. 100% of the issued and outstanding capital stock of Corporation A is held by Individual A.
- 5. Creditor holds an option to purchase nonvoting shares of Corporation A representing 80% of the Corporation A's issued and outstanding capital stock. Creditor has not exercised such option.
- 6. Creditor holds voting shares of Corporation A which represents 80% of Corporation A's issued and outstanding capital stock. Individual A holds the remaining 20% of such shares.
- 7. Creditor has loaned money to Partnership A. A commercial bank (since taken over by the FDIC) has also loaned money to Partnership A.
- 8. Partnership A is now insolvent. It has total liabilities in excess of the fair market value of its assets and it is unable to pay its debts as they come due.

PARTNERSHIP B

- 9. Partnership B is engaged in commerce other than manufacturing. It has assets in excess of \$15,000,000 but less than \$100,000,000.
- 10. The general partner of Partnership B is Corporation B and the limited partners of Partnership B are Corporation B and Corporation C. Corporation B and Corporation C are both entitled to 49.5% of the profits of Partnership B following the return of the capital invested in Partnership B by Corporation B. 100% of the issued and outstanding capital stock of Corporation B is held by Individual A and 100% of the issued and outstanding capital stock of Corporation C is held by Individual C.
- 11. Creditor holds options to purchase nonvoting shares of both Corporation B and Corporation C, representing 80% of each such corporation's issued and outstanding capital stock. Creditor has not exercised such options.

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- 12. Creditor holds voting shares of Corporation B which represents 80% of Corporation B's issued and outstanding capital stock. Individual A and Individual C each hold 10% of such shares.
- 13. Creditor has loaned money to Partnership B. Two commercial banks (one of which is the bank which loaned money to Partnership A) have also loaned money to Partnership B.
- 14. Partnership B is insolvent. It has total liabilities in excess of the fair market value of its assets and it is unable to pay its debts as they come due.

WORK-OUT OF DEBT

- 15. A plan for the restructuring of Partnership A and Partnership B has been worked out among Partnership A, Partnership B, Creditor and the bank lenders of both Partnership A and Partnership B, the relevant components of which include the following:
 - a. Creditor shall, through its control of Corporation A and Corporation B, respectively, cause the liquidation of both Partnership A and Partnership B. Because both of the Partnerships are now insolvent and the Corporations remain liable for all of the debts of the Partnerships, all of the Partnerships' respective assets will be distributed to the Corporations; none of such assets will be distributed to the Corporations.
 - b. Following such liquidations, and Corporation A will be merged with and into Corporation B, with the result that Creditor will hold nearly 100% of the issued and outstanding capital stock of Corporation B before dilution for management equity incentives and as a result of the warrant issued to the banks as described below.
 - c. In connection with such liquidations and merger, (i) the total bank debt will be reduced, (ii) Creditor will make an additional investment in Corporation B, (iii) all existing indebtedness of Partnership A and Partnership B to Creditor will be converted into equity ownership

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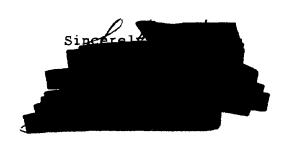
interests in Corporation B and (iv) the banks will be issued a warrant to purchase a portion of the stock of Corporation B in the event certain conditions are satisfied.

CONCLUSION

You confirmed that, because, inter alia, Creditor is a creditor which extended credit to the Partnership in the ordinary course of its business in a bona fide credit transaction and because the liquidation of the Partnerships and the subsequent merger of the Corporation A with and into Corporation B as described above are being effected in connection with a bona fide debt work-out, such transactions may be effected without filing a notice under the Act by reason of the exemption from notification set forth in 16 C.F.R. §802.63(a).

Please let me know if the foregoing conclusion is inconsistent with our previous discussions.

Thank you.



1/13/93

Exempt under 802.63
R5 Coxcurs.

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Schedule A

