

802.63
802.30

[REDACTED]

[REDACTED]

[REDACTED]

VIA FACSIMILE

April 30, 1993

Mr. Patrick Sharpe
Compliance Specialist
Pre-Merger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Sixth Street and Pennsylvania Avenue
Washington, D. C. 20580

Dear Mr. Sharpe:

On April 14, 1993, I wrote a letter to you in which I described a proposed [REDACTED]. The purpose of that letter was to determine whether the acquisition in question would be considered reportable under the Hart-Scott-Rodino Act.

As you may remember, the result of that inquiry was a conclusion that the [REDACTED] should be reported. The purpose of this letter is to confirm our more recent conversations as to which entity should be filing on behalf of the acquiring person.

The acquiring person will be a partnership which is in the process of being formed (the "New Partnership") for the sole purpose of purchasing the [REDACTED]. The ownership of the New Partnership is broken down as follows:

<u>Description of Partner</u>	<u>Percentage Ownership of Partnership</u>
ABC Co., a corporation whose shares are owned by D, an individual (General Partner)	1%
A, an individual (Class A Limited Partner)	49%
B, an individual (Class A Limited Partner)	1%
C, an individual (Class B Limited Partner)	25%
D, an individual (Class B Limited Partner)	<u>24%</u>
	100%

[REDACTED]

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The structure of the partnership at consummation is that no one controls.

None of A, B, C or D will own greater than a 49% interest in the New Partnership. However, as we advised you, the Class A limited partners (A and B) are each entitled to a cumulative preferential return on their invested capital during the term of the partnership and, upon liquidation of the partnership, are entitled to a preferential return of their entire invested capital. The New Partnership will be initially capitalized by investments from all partners totaling \$3,000,000.

It is not anticipated that the cash flows of the New Partnership during the term of the partnership agreement, or the distributable assets of the New Partnership in the event of a dissolution or liquidation will be insufficient to result in all of the partners receiving prorata distributions in accordance with their respective percentage ownership interests as outlined above. However, there is always the contingent possibility, because of the preferential position of the Class A limited partners, that A might receive greater than 50% of partnership cash flow or greater than 50% of partnership assets at the time of a liquidation.

For example, we know that A will be investing capital equal to 49/100 of \$3,000,000, (or \$1,470,000). If the [redacted] (which constitute all of the assets of the New Partnership) were to deteriorate in value to a point where, in the event of a liquidation of the New Partnership, there would be only \$1,000,000 of liquidation proceeds distributable to the partners, then A and B would receive 100% of that sum as a preferential distribution and C, D and ABC Co. would receive nothing. Under such circumstances, A would receive \$980,000 of the \$1,000,000 in distributable liquidation proceeds.

after their purchase

Premerger Office

Although there are contingencies under which A could receive 50% or more of partnership profits of partnership assets in the event of a liquidation, you advised me that the Department would look to the stated percentage ownership interests as reflected above to determine the ultimate parent entity for the purposes of a Hart-Scott-Rodino filing. As a consequence, it was your conclusion that the New Partnership, and not A, is the acquiring person and the proper party to submit the premerger notification report in the transaction in question.

correct

I would appreciate your telephoning me after your receipt of this letter to confirm verbally that my conclusions as stated in this letter are correct and that this letter will be placed in your business files.

Very truly yours,

[Redacted signature block]

but that this could change overtime

ACTIVITY REPORT

RECEPTION OK

TN #

CONNECTION TEL

CONNECTION ID

START TIME

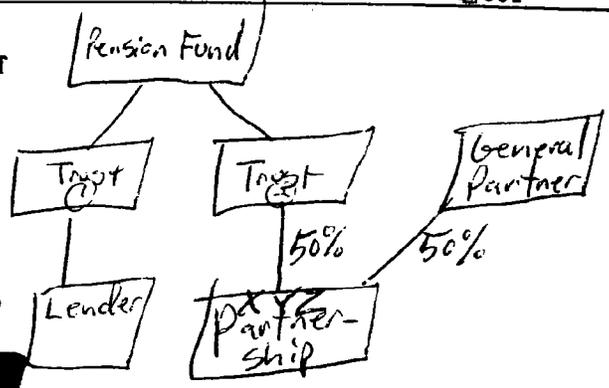
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Bona fide debt work-out

802.63, Applies to both to Trusts and General Partner as UPE's of Partnership. A Bona fide creditor/debtor relationship between the Lender^(creditor) and Partnership^{xyz} exists. Section 802.63 can apply (802.30 cannot since there is a partnership involved).

called [REDACTED]
 5-12-93 and informed him of the above

(PS)

RS concurs