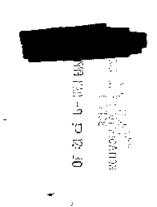


801. II(e)

March 9, 1999

VIA MESSENGER

Patrick Sharpe Premerger Notification Office Federal Trade Commission 6th & Pennsylvania Ave., N.W. Washington, D.C. 20580



Re: Whether Certain Escrowed Funds of a Venture Capital Fund Are Considered Assets of the Fund for HSR Filing Purposes

Dear Mr. Sharper

This is to confirm our discussion last Friday, February 26, about the application of the Hart-Scott-Rodino Act and implementing regulations to a hypothetical acquisition scenario. The hypothetical is as follows:

A group of limited partners are forming a new venture capital fund (the "Fund") Feb hab have which will engage in acquisitions. The Fund is its own parent entity (i.e., no limited partner has the right to receive 50% or more of the profits or of the proceeds upon dissolution), and currently has no assets or regularly prepared balance sheet.

The Fund and Corporation A, a \$100 million person, enter into an agreement to form a joint venture corporation, Newco. Under the agreement, the Fund will 4 contribute in excess of \$200 million to Newco, and will receive a majority interest. Corporation A will contribute the assets of one of its ongoing businesses to



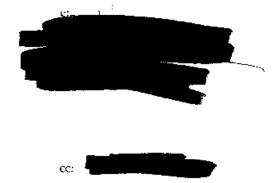
Patrick Sharpe March 09, 1999 Page 2

Newco, and will receive cash (from the proceeds of new debt taken on by Newco and from the Fund's contribution) and a minority interest in the joint venture.

The Fund's contribution to Newco will not be paid directly by the Fund. Instead, prior to closing, the Fund's limited partners will deposit over \$200 million in a bank escrow account established for ERISA purposes. The limited partners are the beneficial owners of the escrow funds. On notice from the general partner of the Fund, money will be transferred from the escrow account directly to Newco in satisfaction of the Fund's obligation under the joint venture agreement. Any funds of the remaining in the escrow account which are not used for acquisitions revert to the limited partners.

My question was whether the money deposited in the escrow account would be considered assets of the Fund, potentially making the Fund a \$10 million person and triggering a filing requirement under section 801.40(b). My understanding of your response is that it would not. Please let me know as soon as possible if my understanding is not correct.

Thank you again for your attention to this matter.



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