

801.1 (8)(1); 802.4

September 8, 1999

VIA TELECOPIER AND REGULAR MAIL

Richard Smith  
Deputy Assistant Director  
Premerger Notification Office  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Mr. Smith:

I write to confirm our telephone conversation of Tuesday, August 24, 1999 in which we posed the following situation to you.

Company A is a general partnership. Company B is a limited partnership whose sole asset is a 17.5% general partnership interest in Company A. Company B is in turn owned by two corporations, C and D. Corporation C owns a 50% general partnership interest in B; Corporation D owns a 49% general partnership interest and a 1% limited partnership interest in B. Corporations C and D each have total assets and annual sales of well below \$25 million. C's only assets are the general partnership interest in B and balance sheet entry entitled "step-up investment." D's only asset is its partnership interests in B. Both C and D are 100% owned by Ultimate Parent Entity-1 ("UPE 1").

The acquiring person ("UPE-2") is in negotiations to acquire, directly or indirectly, the 17.5% general partnership interest in A which is currently held by B limited partnership. The total consideration to be paid will be approximately \$29.86 million. Negotiation of the transaction is ongoing; and for contractual or tax reasons it is possible that the acquisition of the 17.5% general partnership interest could take any one of three forms:

(1) Acquisition of the 17.5% general partnership interest directly from B limited partnership. My view is, and you agreed, that this would be exempt from an HSR filing as the acquisition of a partnership interest resulting in holding less than 100% of the partnership.

(2) Acquisition of 100% of the general and limited partnership interests of B by purchasing these interests from C and D. As we discussed, this would result in UPE-2 holding 100% of B limited partnership; but since B's only asset is the 17.5% general partnership interest, this transaction would also be exempt.

(3) Acquisition of 100% of the voting stock of C for \$14.93 million and acquisition of 100% of the voting stock of D for \$14.93 million. You responded that, even though this transaction is in substance only an indirect purchase of the 17.5% general partnership interest held by B, it would nevertheless be reportable because it is an acquisition of voting stock of two entities under the control of UPE-1. The acquisitions would therefore be aggregated for purposes of the minimum dollar value rule with the result that they would be viewed as an acquisition of voting stock for a price in excess of \$29 million and therefore not exempt under Rule 802.20(b), even though it is in substance an indirect purchase of B's general partnership interest.

Concomitantly, UPE-2 will buy from UPE-1 a 51% LLC interest in another entity which owns a 30% general partnership interest in A. This does not entail the contribution of two businesses to the LLC, nor would UPE-2 have a 100% interest in the LLC or in A. Therefore, we believed, and you agreed, that the acquisition of this LLC interest was not reportable. In addition, we agreed that it would not change the analysis above with respect to the 17.5% general partnership interest which B holds in A.

Through a subsidiary, UPE-2 currently owns a 17.5% general partnership interest in A. Therefore, after the transaction is completed, it will control 65% of the general partnership interests in A for HSR purposes, though its economic interest will be less than that because it would hold only 51% of the LLC described in the preceding paragraph. This existing 17.5% general partnership interest in A likewise does not change the foregoing analysis.

\* \* \*

Since our telephone call of August 24, the parties have also discussed the possibility of converting Company B from a limited partnership into a limited liability company pursuant to the Delaware Limited Liability Company Act §18-214. We believe that this also does not change the foregoing analysis and would ask you to confirm this.

\* \* \*

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Thank you for your courtesy in discussing the Hart-Scott-Rodino aspects of this structure with us. For our records, we would greatly appreciate it if you could confirm to us after review of this letter that, as stated during our August 24 telephone conversation, you agree with the above analysis. My direct telephone line is [REDACTED]

Sincerely,  
[REDACTED]

9/9/99 Called writer and advised that while Steps (1) and (2) above would not be reportable, step (3) is reportable, as long as the partnership below does not hold exempt assets, which would permit the use of 802.4 to exempt the voting security transactions. (He confirmed that the partnership did not hold exempt assets.) As to last paragraph on pg 2, since UPE-1 will hold 100% of LLC (as it presently holds of limited partnership B), no reportable HSR event is taking place. (NO reviewed letter and agrees with conclusions

RS Smith