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[REDACTED]

[REDACTED]

[REDACTED]

(4)

[REDACTED]

THIS  
SHOULD  
BE  
WHICH IS  
PROVIDED

221

VIA FEDERAL EXPRESS

Foreign Section Fee

Room 303  
6th Street & Pennsylvania Ave., N.W.  
Washington, D.C. 20580

Re: Hart-Scott-Rodino Antitrust Improvements Act of 1976 - Request for Interpretation and Advice

Dear Mr. Scanlon:

As you suggested during our recent telephone conversation, I am writing to request advice as to whether the HSR Act applies to a proposed transaction which involves the investment by several foreign pension plans in a new corporation which will purchase partnership interests in an existing partnership.

The parties to the proposed transaction are set forth in the diagram attached hereto as Exhibit A. In that diagram: "X" is an existing partnership which owns a parcel of real estate on which is situated a

Andrew Scanlon, Esq.  
June 3, 1987

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description of "P-2", "P-3" and "P-4" prepared by counsel to "D"); and "J" is a U.S. issuer (a corporation) which is proposed to be created.

The proposed transaction is the following: "J" will be created and its shareholders will be "P-1", "P-2", "P-3" and "P-4". The aggregate

\$50,000,000 will be advanced to J as loan and \$10,000,000 will be contributed to "J" in payment for common stock). The contributions to be made by each individual participant have not been finally decided upon.

"R" holds in "X" for approximately \$40,000,000. To my knowledge the

obligations of "J". I understand that "J" will engage in no other activity other than holding partnership interests in "X".

transaction which may be subject to the notification and waiting requirements of the HSR Act under the HSR Rules presently in effect is the formation of corporation "J", a corporate joint venture. The purchase by "J" of partnership interests in "X" from "B" are not (as I understand it under the HSR Rules presently in effect) subject to the HSR Act since upon

the conclusion of which the interests in the partnership are held by two or more or more "persons" to be neither a transfer of assets nor of voting securities.

As we discussed on the telephone, whether or not the formation of "J" is subject to the HSR Act may turn on whether or not "P-1", "P-2", "P-3" and "P-4" are controlled by "Z" and therefore part of person "Z" or not.

TOPIA IN EXHIBITS C AND D WILL NEVERTHELESS PROVIDE YOU WITH A BASIS FOR A DETERMINATION AS TO WHETHER OR NOT EACH OF THEM IS WITHIN THE PERSON OF "Z".

Section 802.41 states that "J" would have no filing obligation in connection with its formation. If "P-1", "P-2", "P-3" and "P-4" are "controlled" by "Z" and therefore within the "person" of "Z", Section 801.40 indicates that no filing would have to be made by any party acquiring voting securities in "J" since all acquiring parties are within the "person" of "J" and there is therefore no joint venture.

[REDACTED]

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any filing obligation in connection with the formation of "J". Accordingly,

Based upon the foregoing, I would appreciate your advice as to which (if any) of the above-mentioned parties will have an obligation to observe the notification and waiting period requirements of the HSR Act. Particularly, I would like your advice as to:

a) What the applicable criteria are for determining whether any of the "persons" participating in the above-described transaction would qualify for the "minimum dollar value" exemption of § 802.20. Apparently, any "person" which paid \$15,000,000 or less for common stock

common stock of "J" whether the acquisition of such interest would be, nonetheless, exempt on the grounds that "J" would be a newly formed entity without an existing balance sheet which would be paying out to "X"

(b) What the applicable criteria are for determining whether any of the subject "persons" qualify for the "acquisition of property" exemption of the Act.

(c) What the criteria are for determining whether an employee pension plan is a separate "person" or part of the "person" of the employer.

If you require any further information, please do not hesitate to call me.

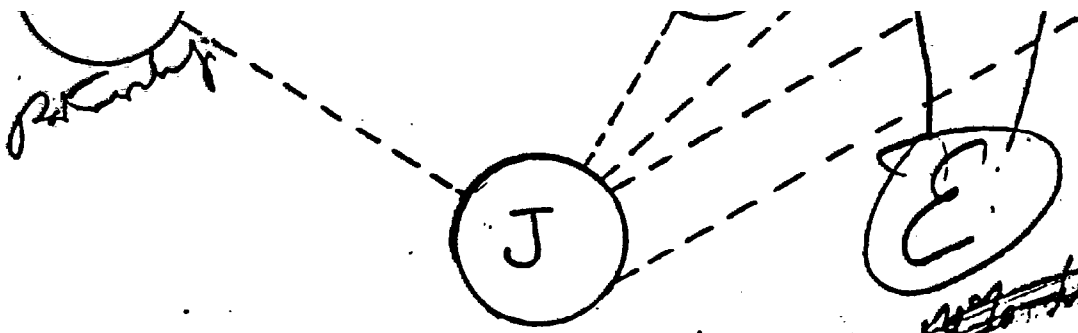
I would appreciate a response by telephone at your earliest convenience. Thanks in advance for your time and consideration.

*[Handwritten signature]*  
Very truly yours,  
[REDACTED]

*See this letter in later date 6/9/87 Amy*

EXHIBIT A

Diagram of Proposed Transaction



Received by  
done call 6/18/87

P<sub>1</sub> will form new corp (H)  
which will acquire patriarchy interest  
in X from B  
E will form US. corp H that  
will acquire some patriarchy  
interest in X

EXHIBIT B

Description of P-1

1. Under the law of its foreign jurisdiction, the plan referred to as P-1 Plan does not have separate legal existence. It is not a legal entity. The assets of P-1 are presently in excess of \$100,000,000.

relevant trust instrument which, in this case, was made between "C" Corporation which is the principal employer and the Trustee.

5. The legal rights and liabilities of "C" Corporation as principal company under the Trust Deed are limited to those matters set out in the Trust Deed.

6. The powers and rights of "C" Corporation under the Trust Deed are confined to the following:

- (a) It has the power to remove the Trustee or to appoint additional Trustee(s) and cannot be the sole trustee of the Corporation.)

contributions or by initiating its own liquidation. (Neither of those courses results in the winding up and distribution of the net assets of P-1.)

7. As a matter of contract law, any variation to the Trust Deed will require the agreement of both "C" Corporation and the Trustee. To that extent therefore "C" Corporation could frustrate the wishes of

on trust for the members of the plan in proportion to their respective interest from time to time. The Trustee does, however, have a right

EXHIBIT B (cont.)

of indemnity against the assets of P-1 in respect of liabilities properly incurred by him as Trustee. The Trustee does not have any such indemnity from "C" Corporation (either contractually or at law).

None of the P-1 assets are subject to "C" Corporation. To the extent of  
remain unaffected

employer under P-1) change the beneficiaries or their interests. Of  
source to the employee in an employer/employee relationship "C"

obtain no or reduced or full benefit). Even if the trustee was such a subsidiary, its fiduciary duties in respect of P-1, would, at law, prevail over other competing duties or interests.

EXHIBIT CDescription of P-2, P-3 and P-4

1. Each of these three Plans has a sole corporate trustee but "P-4" has a separate Committee of Management referred to below. The shares in each of the trustee companies for "P-2" and "P-3" are held in the names of nominees, but the beneficial owner of the shares in each case is "D" corporation.

2. The existing Articles of Association of the trustee companies for "P-2" and "P-3" have provisions regarding the composition of their

"P-2", there have to be 12 directors, of whom 6 are "D" Corporation nominated directors and 6 are plan participants. In the case of the trustee company for "P-3", the Articles provide that the number of nominated directors and 5 must be plan participants.

Trust Deed and rules of each of the two Plans. Under these Trust Deeds and Rules each trust company is subject to a number of duties and obligations and also has a number of powers or discretions. In carrying out its duties and exercising its powers, the trustee companies have to act in accordance with the best interests of the beneficiaries. In a matter concerning investment, the trustees have to take decisions solely on investment considerations and would in

actuarial.

4. In certain cases under the Trust Deeds and Rules, of which the power to amend is an example, the trustees have a power which requires the consent of "D" Corporation.
5. "D" Corporation has no control over the Directors of the trustee companies once appointed, save the technical fall-back of removal of such a Director.
6. The difference in the case of "P-4" is that the trustee company acts

administration and management of "P-4" is vested in a committee of 12.

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EXHIBIT C (cont.)

ected by the plan beneficiaries. The distribution of the funds are  
are taken by the committee. In the event of equality of votes,  
the Chairman of the committee (who is nominated by "D" Corporation as  
one of the six "D" Corporation nominees) has a second or casting vote.

"D" Corporation cannot itself benefit from the funds which are held in

continue on a going concern basis. None of the funds of the plan are

winding-up priority steps have been exhausted. I A. after the trustee

other benefits up to the maximum limits allowed by the national taxing

the maximum amount value of the assets of each of the plan