801.1
801.40

[redacted]

March 14, 1988

[redacted]

6th St. and Pennsylvania Ave., N.W.
Washington, D.C. 20580

VIA TELECOPIER

Dear Mr. Kaplan:

After our telephone conversation Friday morning, I reviewed [redacted]

individual would have the right to vote stock in [redacted] to be held by two different partnerships, as the "nominee" of a third partnership. After review, I have determined that the "nominator"

several general partners or each entity to manage the entity. It has no power to appoint itself as the managing partner. Moreover, the managing partner which is so appointed acts for the particular partnership and not for the entity which appointed him.

The following is a restated description of the facts, from which I conclude that the transaction would not be subject to the 30-day waiting period or premerger notification reporting requirements of the Hart-Scott-Rodino Act. For convenience, a diagram showing the ownership rights of the pertinent persons and entities, is telecopied herewith.

A. The Parties.

X is a corporation with sales substantially in excess of $100 million. A and B are investment limited partnerships. No person or entity has the right to receive 50% or more of the profits (or in the event of dissolution, the assets) of either of them. Accordingly, A & B are their own "ultimate parent entities" within the meaning of Rule 801.1(a)(3). A and B each "control" sales or assets of more than $10 million but less than $100 million

[redacted]

E is another general partnership. Y is a natural person who

agreements of C and D each designate E (which is not a general partner of either C or D) to select one of the natural persons who is a general partner of C or D, respectively, to act on behalf of the entity in which such general partner holds an interest, as the entity's managing partner. The person so designated, acting on behalf of the partnership in which he owns an interest, has the right and authority to act for such partnership in voting stock held by the partnership of which such partnership is general

[redacted]

E has agreed to make a leveraged buyout of certain assets of

[redacted]

Approximately 41% [redacted] stock will be issued to A in exchange for a capital contribution of approximately $4 million. Approximately 10% of [redacted] stock will be issued to B in exchange for a capital contribution of approximately $1 million. [redacted] will obtain a loan from a third party for approximately $60 million, to be secured by [redacted] assets. Neither A nor B will guarantee that loan. X will sell the target assets to [redacted] in exchange for (a) approximately $60 million in cash (depending on the net book value of the assets at the time of transfer, (b) a note for $22 million, and (c) 49% of the stock of [redacted]. The parties have agreed that X will be deemed to make a capital contribution of $4.804 million to [redacted]. We understand that the Board of Directors of X will determine in good faith that $4.804 million is the fair market value of the stock X will receive in [redacted] given the substantial debt of that entity. Stock in [redacted] will be split between A and B for good business reasons, and not as a means of avoiding jurisdiction under the Hart-Scott-Rodino Act.

C. Analysis

The shares which A and B will hold in [redacted] will not be aggregated for Hart-Scott-Rodino Act purposes because A and B are not under common "control" within the meaning of Rule 801.1(b). Moreover, even though Y will have the contractual power to designate 50% or more of [redacted] directors, under Rule 801.1(b), [redacted] will not be deemed to be "controlled" by Y because Y holds the contractual voting rights on behalf of two separate ultimate

parent entities and not beneficially. Accordingly, [redacted] is its own "ultimate parent entity." Under Rule 801.11, [redacted] will not be deemed to be a $10 million person because monies loaned and contributed to it will be used to make the acquisition. Therefore, even though X is a $100 million person and will receive in excess of $15 million for the sale of certain assets, the sale of assets will not be reportable because the buyer will not meet the $10 million "size of person" test.

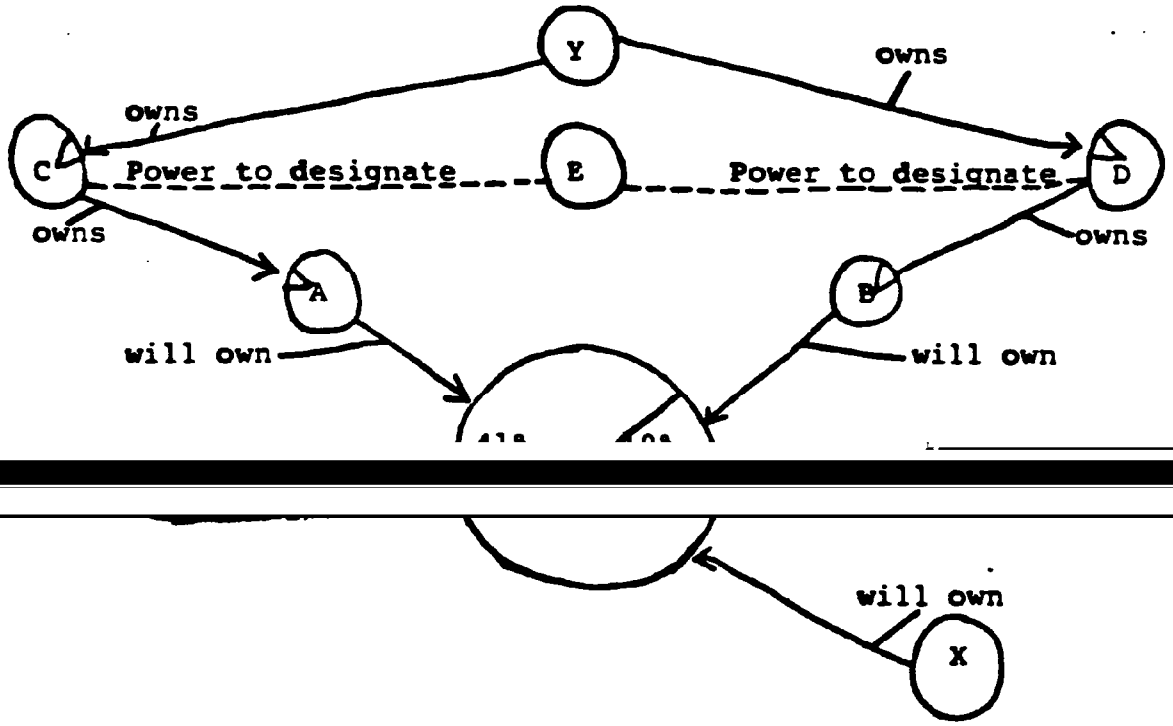
The formation of [redacted] is exempted by Rule 802.20 from the reporting requirements of Rule 801.40, even though a $100 million person and two $10 million persons will contribute to its [redacted] more, and because no person will receive 50% or more of [redacted] stock.

Please call me to confirm that you have received this letter and to advise whether after seeing the above facts in print, you [redacted]

[redacted]

Enclosure

[redacted]


Y
owns
owns
C
Power to designate
E
Power to designate
D
owns
owns
A
B
will own
will own
will own
X