

Wayne Kaplan. Esg.

Re: Reportability of Formation of

Dear Wayne:

This firm is convered to popular in connection with

bringing to your attention the facts set forth below, so that we may consult regarding the reportability of the proposed transactions under the Hart-Scott-Rodino Act.

It is my view as well as that of that none of these transactions is reportable. However, in view of the size and complexity of the transactions, we felt it best to review them with the Premerger Office.

Overview of Proposed Transactions. This transaction

"Exhibit A Subs"), to an entity whose voting securities will ultimately be held as follows:

The management of the seconomic interest in the equity of the through nonvoting (footnote continued)

is approximately \$600,000,000 of which \$475,000,000 is in cash, and \$125,000,000 is in subordinated promissory notes issued by The Transaction will be approximately \$22,000,000.

As shown in the table below, will borrow approximately \$490,000,000 of senior debt from commercial banks and receive \$25,000,000 in equity contributions to finance the transaction, pay expenses and repay approximately \$18,000,000 of existing debt.

Source of Funds		Uses of Funds	
Senior Debt	\$490 million	Purchase Price	\$600 million
Subordinated Promissory Notes	125	Existing Debt	18
Common Stock	_25	Est. Expenses	_22
Total Sources	\$640 million	Total Uses	\$640 million

approximately one year ago for the purpose of permitting its limited partners (pension funds, banks and other institutional investors) to

skills of its general partner

(footnote continued from previous page)
securities. Thus, the economic interest in the equity of
ill be held as follows:
24.9%; and 26.1%.

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or all of the sto militan of the acquisition (the "Closing

Date") Date with the state will not draw down all of the \$18 million on closing bate when it is required to relinance such indeptedness by the outside lenders.

funds, banks, other institutional investors and affiliates of invest indirectly in

the general partner of and and is an affiliate of a private investment banking firm founded as a

industrial corporations and financial institutions in the United States and abroad. The circumstance of currently are

partner of both and and will have a one percent equity

invest in the limited partners of the has not been fully established, but it is clear that no single entity (and no person, i.e., group of entities under common control for purposes of the Hart-Scott-Rodino Act) will have the right to 50 percent or more of the profits, or the right, in the event of dissolution, to 50 percent or more of the assets, in both the land the land of the land of

forth in Section 801.1(b)(2) is inapplicable as to these two entities.

The property of the same general partner and may accordingly be expected to take similar actions with respect to their respective investments in but it is our understanding that these factors.

and records. Will not be the beneficial owner of any assets or voting securities held by and vice versa, nor will any person or entity be the beneficial owner of the assets or voting securities held of record respectively by

There will, however, be overlap between the investors in and those in Tt is presently anticipated and for numbers

in the state of th

There will, however, be no contract or other agreement obligating and to act together with respect to their interests in

equity of will be held by investors that will simultaneously hold interests in

In deciding to form as a separate entity to invect in along with and were not motivated by any intent to avoid premerger reporting under the Hart-Scott-Rodino Act. The

or holding interests in excess of twenty-five percent in certain types of businesses including some of the businesses involved in the transactions described herein. In the present_situation

granomic interport in hones it was decided to form which and

In view of the facts set forth above, it is our view that the Hart-Scott-Rodino Act and regulations relating thereto do not require the aggregation of voting securities of held by with those hold by the separate "nersons" not under common control and hence are separate.

- (1) will be incorporated as a wholly-owned subsidiary of In addition, will cause to be incorporated 15 direct and indirect wholly-owned subsidiaries, which will be "mirror image" subsidiaries of the Exhibit A Subs.
- (2) ill acquire the assets presently held by the Exhibit A Subs by means of the merger of each Exhibit A Sub with and

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nonvoting securities.

Among the assets to be transferred by will be approximately \$20 million in cash, to be used by as part of its working capital; the remainder of the cash presently

mergers, and their voting securities will be wholly-owned directly or indirectly by which will continue at stage (2) to be wholly-owned limited.

(3) Subsequently, very shortly after the occurrence of steps (1) and (2), the following actions will be taken simultaneously: (2) ill sell (i) 24.9% of the voting and nonvoting securities in

Formation of When formed, will be a wholly-owned subsidiary of Hence, its formation could be regarded as exempt under the intra-person exemption, Section 802.30. Alternatively, because section being formed for the purpose of serving as an acquisition vehicle in corporate form, its formation may be deemed to be subject to Section 801.40. If so, the transaction does not meet one of the threshold tests set forth in Section 801.40(b), namely, the size-of-transaction test. For purposes of Section 801.40, there will be three words.

commerce commission (the "icc") for an exemption from the

the process of applying for approval from D for the transfer of ownership of certain of the vessels of one of the Exhibit A Subs. That approval also will be obtained before steps (2) and (3) hereof occur.

The Fleet operates under the bulk commodity exemption

regulated by the ICC

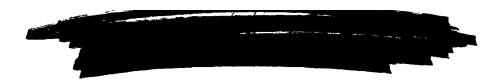
Exhibit A Subs which constitute approximately one-quarter of the

namely and None of these persons will acquire voting securities conferring control or voting securities valued at \$15 million or more. Thus the acquisitions h

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propries of the Exhibit A Subs. Inasmuch as the

attention to this inquiry. If we have not heard to the contrary within ten days of today's date, we will assume that the Premerger Office agrees that the transaction is not reportable. In any event, we will assume that the transaction is not reportable.



Enclosures

See the section in this letter entitled "Steps in the Transaction" for the allocation of the purchase price of the voting securities of the securities of th

For the same reasons, if the transaction is viewed as (1) the formation of the first in a transaction exempt from Section 802.30, and (2) the acquisition of voting securities in

likewise exempt under Section 802.20(b).