[redacted]

801.1 Control of Partnerships
X-9 NOT
X-10 PARTNERSHIPS SINCE COMPANY A OWNS 100% OF THEM.
X-11

[redacted]

March 6, 1989

BY HAND

John M. Sipple, Jr., Esq.,
Senior Attorney
[redacted]
Premerger Notification Office,
Bureau of Competition - Room 301,
Federal Trade Commission,
Sixth and Pennsylvania Avenue, N.W.,
Washington, D.C. 20580.

RECEIVED
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PREMERGER NOTIFICATION OFFICE

Re: Applicability of Hart-Scott-Rodino Act to Acquisition of Partnership Interests

Dear Mr. Sipple:

On March 2, 1989, we spoke by telephone with Victor Cohen of your office, and discussed with him the applicability of the Hart-Scott-Rodino Act (the "H-S-R Act") to the transaction described below. Mr. Cohen suggested that we submit a letter describing the transaction so that we could obtain your views on whether an H-S-R filing is required.

The transaction involves the acquisition of 50% [redacted] (Partnerships X-1 through X-11) and a 24.75% interest in another partnership (Partnership X-12). The partnership interests will be transferred from Company A, which is the

ultimate parent entity of all 12 partnerships, to Company B. All of the partnerships will be reconstituted and [redacted] partnerships. With three exceptions (Partnerships X-8 through X-10), each partnership currently has one or more economic interests in them ranging from 1.6% to 51%.

The transaction is as follows:

1. Company A and Company B are both $100 million persons in the H-S-R sense.

2. Primarily for tax reasons, Company A operates a portion of its business through 12 partnerships (Partnerships X-1 through X-12), the combined assets of which constitute less than 10% of the total assets of Company A.

3. Partnerships X-1 through X-8 and X-12 are organized as New York and Connecticut general partnerships and have been in existence since 1984. Partnership R is a partner in all of these partnerships. Company A has a 95% [redacted] Partnership R, the other 5% interest in Partnership R is held by several unrelated third parties. As a result, these unrelated third parties have indirect interests in Partnerships X-1 through X-8 and X-12 ranging from 1.6% to 4.9%. In addition, another unrelated third party is a 50% partner of Partnership X-12, resulting in an interest of 49% or less in that partnership on the part of Company A.

4. Partnerships X-9, X-10 and X-11 are organized as New York general partnerships and were formed in early 1988, early 1989 and early 1989, respectively. These

partnerships each have two partners, both of which are 100%-owned subsidiaries of Company A. These partnerships, however, collectively have total assets of approximately $20 million.

5. Company A has agreed to sell to Company B a 50% partnership interest in Partnerships X-1 through X-11 and 49.5% of Partnership R's 50% interest in Partnership X-12 for a total of approximately $140 million.* The purchase price will be paid to Company A by Company B; it

6. As part of the above-mentioned transaction, the partnership agreements of Partnerships X-1 through X-12 will be amended and restated to show that each partnership has been reconstituted with a subsidiary of Company B as a new partner. In the case of Partnership X-12, Company B

will be transferred. All of the assets presently in

held by those partnerships.

7. As part of the same transaction, Company A and Company B will form a new partnership, Partnership Y, that will be 50.5% owned by a subsidiary of Company B and

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* Partnership X-12 has a 50% partner that is unrelated to Company A; that partner will continue to hold a 50% interest after Company B acquires a 49.5% interest in Partnership R's 50% interest.

[redacted]

49.5% owned by a subsidiary of Company A. Company B has [redacted]

assets. Company A has agreed to fund operating expenses of the partnership over a number of years.

[redacted]

Partnership X-10 will be managed jointly by Company A and [redacted]

[redacted]

We believe that none of the transactions described above is required to be reported under the H-S-R Act. The acquisition by Company B of interests in the 12 partnerships [redacted]

partnership not reportable, because a partnership interest is deemed neither a voting security nor an asset." See Amendment of 16 C.F.R. § 801.1(b), 52 Fed. Reg. 20058, 20061 (1987). See also ABA Premerger Notification Practice Manual (1985) (Interpretation #59). We are not aware of any published interpretation indicating that the partnership form will be disregarded where the partners are controlled [redacted] in paragraph 7 above is not reportable, since the formation

There is no justification for disregarding the partnership form of X-1 through X-12 in analyzing the nature of the "interests" that are being acquired by Company B. In the absence of H-S-R criteria defining what constitutes a "partnership," the validity of a partnership should be determined by reference to state law. There can be no question that each of these partnerships is duly constituted under state law and is treated as a partnership for tax and other purposes by federal and state authorities. The fact that Company A currently owns 49% - 98% of X-1 through X-8 and X-12 and 100% of X-9, X-10 and X-11 does not invalidate their partnership status for H-S-R purposes. State law permits a partnership to be formed by two subsidiaries (or partnerships) of the same corporate entity.

In any event, the partnership form of X-1 through X-8 and X-12 cannot be disregarded, for H-S-R purposes, without nullifying the legally valid indirect interests in each of those partnerships that are currently held by unrelated third parties. (See paragraph 3 above.) There is no conceivable basis for viewing a partnership in which several unrelated parties hold economic interests as not constituting a valid partnership for H-S-R purposes.

The fact that X-9, X-10 and X-11 are comprised entirely of wholly-owned subsidiaries of Company A should not invalidate their partnership form. However, even if [illegible] partnerships by Company B from Company A, this acquisition

would not be required to be reported because less than $15 million in assets would be acquired by Company B. (See 16 C.F.R. § 802.20(a)).

[redacted]

more than four years ago, and none of them were formed to avoid H-S-R reporting requirements and (b) all of the assets of Partnerships X-1 through X-12 will remain in the respective partnerships after Company B acquires its

[redacted]

If you have any questions, or require further information, please feel free to call [redacted]

Very truly yours,

[redacted]

cc: Victor Cohen, Esq.