1) Real Estate Exemption
2) 802.20(b)

JS

[redacted]

December 27, 1989

John M. Sipple, Jr.
Chief, Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Room 303
Washington, D.C. 20580

BY MESSENGER

[redacted]
Antitrust Improvements Act Of 1976

Dear Mr. Sipple:

This is a request for an informal interpretation of filing requirements under the Hart-Scott-Rodino Antitrust Improvements [redacted]

company ("the Company") involved in real estate development. The [redacted]

the Partnership. The present capital account ratio of the partners is approximately 85% capital of Savings and 15% capital of the Company. The Partnership is engaged in the business of real estate development. Savings also owns 100% of the stock in a corporation ("Management") engaged in the business of management of syndicated real estate limited partnerships incidental to the Partnership's real estate activities. Management also performs property management services for real estate limited partnerships.

In 1984, Mr. A owned another corporation which was a partner in the Partnership. Savings purchased that corporation from Mr. A in exchange for notes issued by Savings. Mr. A's new

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company, the Company, which is now a general partner of the [redacted]

The Company and Savings are currently negotiating a transaction whereby Savings will withdraw from the Partnership and receive in consideration certain distributions from the Partnership. Savings will also sell its stock in Management to Mr. A. Contemporaneously with the withdrawal of Savings from the Partnership, a limited partnership controlled by Mr. A, will acquire a 1% interest in the Partnership.

Mr. A's brother, Mr. B, is President of the Company. Also contemporaneously with the withdrawal of Savings, Mr. B, through a new company wholly owned by him, will acquire a 10% general partnership interest in the Partnership which will entitle him to 10% of the profits in the Partnership. After the closing the Partnership will become a limited partnership and Mr. B's interest [redacted]

The Partnership's assets are primarily real estate. The Partnership's real estate assets consist of (1) real estate [redacted]

three other partnerships that are involved in multifamily and residential condominium construction. In addition the Partnership has other assets incidental to its real estate holdings, such as cash, receivables, and prepaid expenses.

A Savings and Loan has a branch office in one office building owned by the Partnership. That space is valued at approximately $5,000,000. An apartment complex now under development is expected to have some retail space. It is as yet [redacted]

[redacted]

by Savings and held by the Partnership, and (4) two raw land properties with a total fair market value of $12,550,000. In [redacted] indebtedness and renegotiate certain collateralized transactions and contractual obligations with third parties in terminating the working relationship between Savings and the Company. In addition, Savings will sell its stock in Management to the Mr. A for $14,435,000. ? Size of A? 25 MM or more ?,

[redacted]

stock in six corporations now owned by the Partnership will be transferred to a company or companies controlled by Mr. A. Three of the corporations will be transferred for nominal consideration ($1.00) and the other three will be transferred for a total price [redacted]

Partnership participated in, and the stock in a corporation which is developing some single-family residences.

[redacted] the Company, will be entitled to 90% of the profits of the Partnership and Mr. B, through what will become a limited [redacted]

I would like whatever guidance you can provide on whether this transaction is reportable under the Act. On the above facts, [redacted]

100% interest in a partnership and thus not reportable? In the alternative, is this transaction deemed to be an acquisition of realty in the ordinary course of business and exempt from the [redacted]

This transaction will not raise any competitive issues. Two partners in a real estate development company are separating. The Act and the Rules recognize that the acquisition of real estate is unlikely to raise any competitive issues, hence the exemption. The types of real estate in question here, raw land, residential properties, and office buildings are the types of real estate that the Premerger Office has found to be included within the exemption in the past. The withdrawal of one partner from the partnership does not decrease the number of competitors but increases it by one. The enforcement of the antitrust laws provides no policy basis to require the reporting of this transaction.

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The withdrawal from the partnership by Savings and the redemption of the partnership interest by the Partnership is neither the sale of assets nor voting securities by Savings. Mr. A, as the ultimate parent entity of the Partnership, will [redacted] be neither a voting security nor an asset. See 52 F.R. 20061, May 29, 1987. If the transaction is viewed as the acquisition of less than a 100% interest in the Partnership by Mr. A, it should not be a reportable transaction.

If the acquisition is deemed to be the acquisition by Mr. A of a 100% interest in the Partnership, then the acquisition should be treated as an asset acquisition. The Partnership holds, develops, and sells realty in its normal course of business. If [redacted] of business is exempt from the requirements of the Act. 15 U.S.C. § 18A(c)(1).

Savings is receiving two raw land parcels as part of its [redacted]

We would appreciate whatever guidance you can give us in determining whether this is a reportable transaction.

Sincerely,

[redacted]

1/3/90 - called PNE and advised that we view A as having acquired all of the partnership interests, i.e., the full assets

[redacted]

has sales or assets of $25 MM or more, the acquisition ... reportable under 802.20(b). (Same test should be applied to the three "non-active" corporations controlled by the Partnership which will be