

Partnership Formation

→ 801,410

[REDACTED]

[REDACTED]

[REDACTED]

et

to the 1967  
version of  
the Act

Patrick Sharp, Esq.

Section  
which

Washington, D.C. 20530

This letter is furnished to confirm our telephonic conference today concerning any requirement that our client might be required to file a premerger notification under Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") and the rules and interpretations (the "Rules") of the Federal Trade Commission (the "Commission") thereunder in

purposes of an analysis of the issues.)

I informed you in substance as follows. Our client is an investment fund (the "Fund") which seeks to enter into the following transaction with an operating company (the "Company"). The Company presently operates a subsidiary (the "Subsidiary") which has operating assets (the "Assets") having a value of approximately \$125,000,000, subject to preexisting intercompany debt owed by the Subsidiary to the Company of approximately \$100,000,000 (the "Debt"). It has been agreed

will contribute \$50,000,000 of cash to the Partnership and the

[REDACTED]

fund will hold a two-thirds interest in the Partnership and the Subsidiary will hold a one-third interest, which it will be seen

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is proportional to their net contributions to the Partnership. Both the Fund and the Company exceed the threshold size specified in the Act.

I also told you that the partnership agreement of the Partnership which provides, generally, that there is to be a management committee which will have "the same powers and responsibilities over the business and affairs of the Partnership ... which the board of directors of a Delaware corporation exercises over its business and affairs." The partnership agreement further specifies the method of selection of the members of the committee (the Fund and the Subsidiary are entitled each to select a specified number of members), with the result that, except for certain actions which require unanimous approval, the Fund will control the committee.

Based on the foregoing facts, and after consultation with Thomas Hancock of your office, you responded to me that no filing requirement exists. In reaching that conclusion, it is

considered as anything other than it purports to be. In this connection, the following should be relevant. First, it is in actuality a partnership organized under

tax and business considerations applicable to the transaction. The status of the Partnership as a partnership for tax purposes, for example, is critical to the economic terms of the transaction. While the governing body of the Partnership has some similarities to a board of directors of a corporation, the management committee is not

will among other things be subject to the provisions of

§801.40 of the Rules (including the related interpretations of the Commission) should then be applicable. Under that Section, it is the settled policy of the Commission that a partnership formed as a joint venture will never be subject to the reporting requirements of the Act unless there is some shifting of the economic interests of the parties involved in the process. In the present case, the Fund will have contributed \$50,000,000 in cash for a two-thirds interest in the Partnership and the Subsidiary will have contributed the Assets, which, after being offset by the Debt to which the Assets are

*Already concluded that §801.40 does not apply since it is a partnership formation*

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subject, have a net value of \$25,000,000, for a one-third interest. While the contributed cash and the additional cash applied by the borrowing by the Partnership will then be paid by the Partnership to the Company to eliminate the Debt, this

I believe it is your view that the payment by the

Rules. In this connection, the result when all of the transactions have been completed is that the Partnership will

\$75,000,000, and the contributions of the partners, respectively of \$50,000,000 and \$25,000,000 are directly equal


economic values which would cause the transactions to be recharacterized as a purchase.

We greatly appreciate your prompt attention to our inquiry. Thank you very much for your courtesy and responsiveness.

Very truly yours,



This transaction is a formation of a Partnership - not a corporation - not reportable

contacted   
not reportable

(PS)

(PS) concurs - but notes minor flaws in letter