[redacted]

August 11, 1992

VIA HAND DELIVERY

Victor L. Cohen, Esq.
[illegible]
Bureau of Competition
Federal Trade Commission
Room 310
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Cohen:

[illegible]

assets that are subject to a financial (or "leveraged") lease must be reported under the Hart-Scott-Rodino Act. The acquisition satisfies the "size-of-persons" and "size-of-transaction" tests set forth in the Act. We agreed in our conversation that [redacted] and I would describe the transaction in writing so that the Premerger Staff could determine whether the transaction is exempt as an acquisition of assets "in the ordinary course of business." In addition, since [illegible]

[illegible] attributable. . ." We also request that the Premerger Staff confirm that the transaction is exempt under Rule 802.50.

The proposed transaction involves the acquisition of [redacted] The beneficial owner of the [redacted] is a [redacted] limited partnership ("Partnership A") that was formed solely to purchase and hold [illegible] for investment [illegible] trust, which is also the lessor of the [redacted]. Each trust is controlled by Partnership A. Each [redacted] has been leased to the same [redacted] for a period of twenty years (until the year 2007). The leases are typical "financial" leases, i.e., the owner/lessor is a passive investor and the lessee retains complete control over the use of the [redacted] throughout the lives

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[redacted]

The lessee [redacted] company has subleased all [redacted] to another [redacted] company. The proposed transaction will have no [redacted] extent it may be relevant to the staff's analysis of Rule 802.50, both [redacted] companies (the lessee and the sublessee, are U.S. corporations).

[redacted] and I represent one of two U.S. companies that [redacted] regularly originate lease financings and regularly buy and sell interests in assets that are subject to financial leases. Both the general and limited partners of Partnership A also are [redacted] lease transactions. However, as we discussed with you over the telephone, the limited partner of Partnership A is, as part of a bankruptcy proceeding, presently undertaking to dispose of its [redacted] transaction, however, does not involve all or substantially all of the assets of the limited partner's existing lease portfolio.

As originally contemplated, Partnership B would acquire only the 90% interest in Partnership A held by its limited partner, [redacted]

the acquisition of 100% of the partnership interests in [redacted]

subject to financing leases if the following conditions are met: (1) the assets are subject to a bona fide financial lease; (2) while title to the leased assets will pass to the buyer, control of the assets will remain with the existing lessee; (3) the

[redacted]

[redacted]

partner will not. We submit, however, that the exemption still should be available. To begin with, as originally structured, only the limited partner's 90% interest in Partnership A was to [redacted] been exempt. Moreover, any subsequent acquisition of the [redacted] merely because the structure has changed so that both partnership interests will be acquired simultaneously.1/

In addition, it appears that in considering whether a sale of assets subject to a lease financing is exempt, the Staff has [redacted] Interpretation No. 25, Commentary, (listing factors Staff considers in determining whether sale of assets subject to lease [redacted] available. This is particularly so in a transaction in which one [redacted]

1/ The fact that Partnership A is disposing of all its assets has no bearing on the analysis. Although the sale of all or substantially all of the assets of an "entity" typically takes a [redacted]

[redacted]

ultimately exit the business only because of a bankruptcy proceeding.

We believe that the proposed transaction is also exempt under Rule 802.50(a) of the Premerger Rules because it is "an [illegible]

All [redacted] were built in [redacted]. Since the [redacted] were [illegible]

[redacted] with stops at several [redacted] ports, and back to [redacted]. The vessels primarily serve as [redacted] transporting goods from small [redacted] to larger [illegible]

[redacted]s are manufactured in [redacted] although it is possible that some U.S. produced goods also are carried on the [redacted] at times. Routine maintenance of the [redacted] takes place in [redacted] outside the United States.

While all [redacted] are [redacted], none has ever sailed in the [redacted]. The [redacted] is necessary to qualify for certain U.S. [illegible] performed by U.S. nationals. The US eligibility of these [redacted] is scheduled to expire in [redacted] at which time the lessee or sublessee would be free to "reflag" the [redacted] under the laws of [illegible]

In the past, the Staff has not considered the country of registration, or the nationality of the crew (here American) to be determinative in considering whether [redacted] are assets located in the United States. Premerger Notification Manual [illegible] [redacted] [illegible]

the [redacted] are serviced, and, most importantly, the source of revenues generated by the [redacted]. Id. See also 43 Fed. Reg. 33450, 33497 (1978) (exemption of foreign assets acquisition by U.S. person turns entirely on U.S. sales, if any, attributable to the assets). Applying these factors to the [redacted] in question, it is clear that they should be considered assets located outside the United States.

We appreciate your assistance in this matter. Please call

[redacted]

cc: [redacted]