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402.20
(b)

March 7, 1994

Mr. Patrick Sharpe
Compliance Specialist
Pre-Merger Notification Office
Bureau of Competition, Room H-303
Federal Trade Commission
Sixth Street and Pennsylvania Avenue
Washington, D. C. 20580

VIA FACSIMILE

Dear Mr. Sharpe:

On January 21 and February 18 of this year, I sent you letters about the same proposed series of transactions (collectively the "Formation/Acquisition Transactions"). I have spoken with you several times about the Formation/Acquisition Transactions via telephone and, in addition, I have spoken with [redacted] outside of Washington, D.C.

includes more appropriate terminology and narrative, as well as statutory, regulatory and other references, wherever appropriate.

The structure of the Formation/Acquisition Transactions has recently changed, motivated solely by desires to insulate certain institutional entities from exposure to personal liability and by federal tax considerations (I will go into greater detail later in this letter). I have explained these changes to our Hart-Scott-Rodino counsel and it is our common belief that no premerger notification filing is required as to any aspect of the restructured Formation/Acquisition Transactions.

1. the formation of a limited liability company (the "Formation Transaction"); and
2. the withdrawal of certain partners from a partnership which would have resulted in the remaining partner holding 100% of the interests in that partnership (the "Acquisition Transaction").

Under the Formation/Acquisition Transactions, as currently structured, we have reached the following conclusions:

1. The Formation Transaction is not reportable because:

(a) No contributor to the limited liability company will receive \$15 million in notes, securities and the limited liability company (together with any entities controlled by it) will not have \$25 million or more in annual net sales or total assets, thereby failing the size of transaction test [16 C.F.R. Sec. 801.20]; and

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All of the [REDACTED] are general partners in XYZ Partnership. [REDACTED] is the sole limited partner in XYZ Partnership.

Because [REDACTED] is entitled to 50% or more of the profits (or assets upon liquidation) of XYZ Partnership, [REDACTED] "controls" XYZ Partnership pursuant to 16 C.F.R. Sec. 801.1 (b) (1) (ii) and, as explained in Paragraph D below, is the ultimate parent entity of XYZ Partnership. K

D. The current ownership of [REDACTED] is broken down as follows:

<u>Description of Partner</u>	<u>Share of Partnership Profits and Assets upon Liquidation</u>
Fund B, a revocable group trust whose settlor/beneficiaries are public and private pension plans	16.67%
Corporation X, whose shares are 100% owned by a pension plan	21.67%
Corporation Y, whose shares are 100% owned by a pension plan	21.67%
Corporation Z, whose shares are 100% owned by a life insurance company	6.66%

Because none of the above described entities has the right to receive 50% or more of the profits (or assets upon dissolution) of [REDACTED] that [REDACTED] is not controlled by any other person and is its own ultimate parent entity (see 16 C.F.R. Sections 801.1 (b) (1) (ii) and 801.1 (a) (1) (3)). OK

A. The [REDACTED] currently have significant contingent financial

Rather than acquiring direct partnership interests in the [REDACTED] Fund A and Fund B, [REDACTED] Trust and Fund B owns the remaining 33.333%. Because the Federal Trade Commission will look through [REDACTED]

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[REDACTED] of those obligations on a discounted basis², the [REDACTED]

or money:

Purchaser	Percentage of XYZ	Selling Price
Corporation X	6.6%	\$ 66.00
Corporation Y	6.6%	\$ 66.00
Corporation Z	1.8%	\$ 18.00
ABC-LLC, a newly formed limited liability company owned by Fund A (as to 66.67%) and by Fund B (as to 33.33%)	15%	\$150.00

*OK
sale of
partnership
interests*

The reasons for the formation of ABC-LLC are detailed in Paragraph C below.

As a result of the sale, the above purchasers will all be general partners in XYZ Partnership.

B. In order to preserve the federal tax treatment of XYZ Partnership as a partnership rather than a corporation, it has been determined to convert that partnership from a limited partnership to a general partnership. The clear consequence of that conversion will be that all of the constituent partners in XYZ Partnership will become general partners, including [REDACTED] which is [REDACTED]

OK

Partnership, each of its constituent partners will, by operation of law, become personally liable for all of the obligations of XYZ Partnership. In order to insulate the settlor/beneficiaries of ABC Group Trust from such personal liability, it has been determined to do two things:

*file
for HSR*

² While it does not affect the HSR analysis, we note that the [REDACTED] will be paying to XYZ Partnership the negotiated sum of \$1.3 million in return for the simultaneous cancellation of certain guaranties which will relieve affiliates of the [REDACTED] from approximately \$1.7 million of remaining obligations under those guaranties.

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- [REDACTED]
1. Cause [REDACTED] to be converted from a general partnership to a limited partnership whereunder the ABC Group Trust would be the only limited partner. OK
 2. In order to satisfy the objective of maintaining partnership management

of XYZ Partnership and without triggering a tax termination of [REDACTED] 1/24/94

- [REDACTED] g.u.
- D. The ownership structure of XYZ Partnership after all of the foregoing steps have been completed will be:

Description of Partner	Share of Partnership Profits and Assets upon Liquidation
Corporation Y	6.60%
Corporation Z	1.80%
ABC-LLC	15.00%
[REDACTED]	70.00%

- E. The ownership of [REDACTED] after all of the foregoing steps have been completed will be as follows:

Description of Partner	Share of Partnership Profits and Assets upon Liquidation
ABC-LLC	49.00%
Corporation X	21.67%
Corporation Y	21.67%
Corporation Z	6.66%
ABC Group Trust	1.00%

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All of the above will be general partners in [REDACTED] except the ABC Group Trust, which will be the sole limited partner.

Because none of the above described entities has the right to receive 50% or more of the profits (or assets upon dissolution) of [REDACTED] that partnership is not controlled by any other person and is its own ultimate

III. Hart-Scott-Rodino Analysis

We now need to address whether any Hart-Scott-Rodino ("HSR") filings are required under the foregoing scenario and, if any are so required, who should file.

A. The Formation Transaction

You have advised me that the Premerger Office currently treats the formation of a limited liability company the same as the formation of a corporate joint venture.

Under 16 C.F.R. Sec. 802.20, no filing is required unless a contributor acquires voting securities which:

- (a) are valued at ^{more} [not less] than \$15 million; or
- (b) confer control of an issuer which, together with all entities it controls, has at least \$25 million in annual net sales or total assets.

ABC Group Trust has agreed to transfer a 49% interest which it currently holds in [REDACTED] to ABC-LLC. Because ABC Group Trust is a revocable trust, it does not, for HSR purposes, hold any of the

(e) (4)). As a consequence, the partnership interests in question are deemed acquired by ABC-LLC from Fund A and Fund B, the settlor/beneficiaries of ABC Group Trust.

In addition, ABC-LLC will, in an almost simultaneous but separate transaction, acquire a direct 15% interest in XYZ Partnership.

Because the membership interests (i.e. "voting securities") in ABC-LLC are not and will not be publicly traded and their acquisition

Fair Market

FMV as determined by each acquiring person (16 C.F.R. Sec. 801.10 (a) (2) (ii)).

Under the HSR rules, it is assumed that the amount of any indebtedness with respect to the underlying assets of a corporation is taken into account in arriving at the FMV of its voting securities. One means by which Fund A and Fund B may determine the FMV of the voting securities they are

sole asset.

I said the value of a voting security (floats)

You have advised us that in valuing those voting securities, it would be appropriate to begin with the equity value of the sole asset of XYZ Partnership, i.e. the [redacted]. The [redacted] has a free and clear value of \$184 million, less subject to \$124 million of indebtedness, for a net

of the underlying assets,

At most, the aggregate equity value of all partnership interests in [redacted] being transferred to ABC-LLC will be \$9.86 million, calculated as follows:

- (a) The value of ABC-LLC's interests in [redacted]
 - \$20 million value of XYZ Partnership's assets X 70% [redacted] ownership percentage of XYZ Partnership)
 - = \$14 million X 49% (ABC-LLC's ownership percentage of [redacted]) = \$6.86 million; plus
- (b) The value of ABC-LLC's direct interest in XYZ Partnership:

Because Fund A and Fund B will collectively be acquiring less than \$15 million in voting securities of ABC-LLC, neither individual acquisition meets the \$15 million size of transaction test under 16 C.F.R. Sec. 802.20 (a).

In addition, the alternative size of transaction test under 16 C.F.R. 802.20 (b) is not met because the issuer, ABC-LLC, will not control any other entity and because ABC-LLC does not itself have annual net sales or total

ABC-LLC will be entitled to only 49% of the profits (or assets upon liquidation) of the [redacted]. In addition, ABC-LLC will be entitled to only 49.3% of the profits (or assets upon liquidation) of XYZ Partnership.

2. The Size of Person Test

Under the special size of person rules applicable to the formation of corporate joint ventures (as set forth in 16 C.F.R. Sec. 801.40), a formation transaction is not reportable, regardless of the size of the contributors to that venture, unless the venture itself will have at least \$10 million in assets.

Because ABC LLC will not obtain a majority of the interests in [redacted] and XYZ Partnership will not be included at book value in determining the size of ABC-LLC (cf. ABA, Premerger Notification

Pursuant to that approach, the value of all assets (i.e. partnership interests) which will be owned by ABC-LLC as a result of the Formation Transaction

meet the special size of person test under 16 C.F.R. Sec. 801.40.

will be less than \$10 million as it is less than the joint venture

B.

You have on several occasions confirmed to me that the transfer of partnership interests is not reportable unless it results in one person holding all of the interests in the partnership. This position is supported in ABA, Premerger Notification Practice Manual, Par. 93 (1991). OK

As reflected earlier in this letter, the Acquisition Transaction will result in the interests in XYZ Partnership being held by five different ultimate parent entities

1. The sole shareholder of Corporation X (by virtue of that corporation's

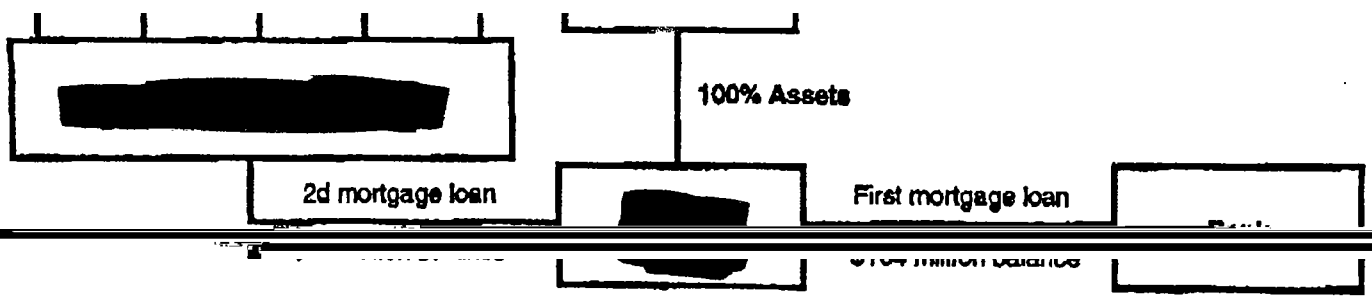
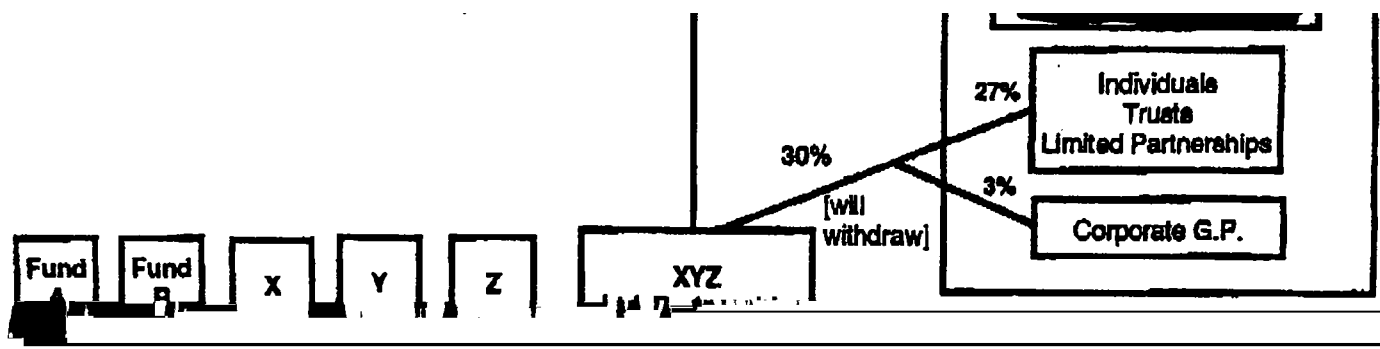
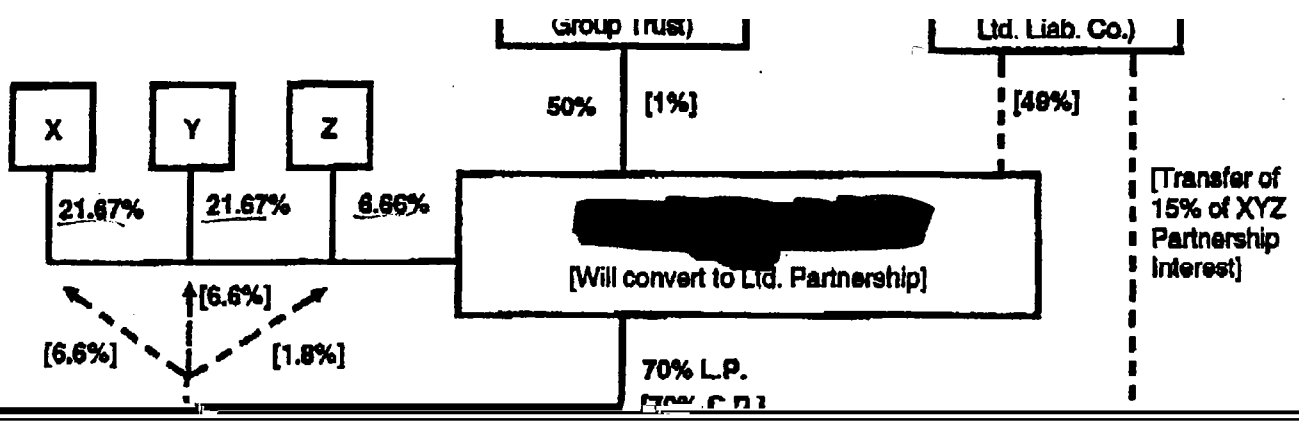
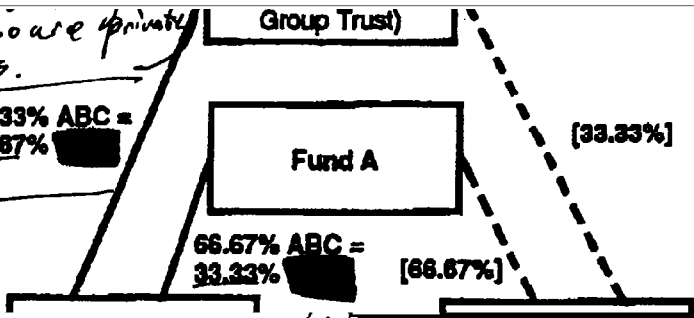
2. The sole shareholder of Corporation Y (by virtue of that corporation's newly acquired direct ownership of a 6.67% partnership interest in XYZ Partnership);

3. The sole shareholder of Corporation Z (by virtue of that corporation's newly acquired direct ownership of a 1.8% partnership interest in XYZ Partnership);

4. Fund A (by virtue of 66.67% ownership of ABC-LLC, which in turn has a newly acquired direct ownership of a 15% partnership interest in XYZ Partnership); and

Formation and Withdrawal Transactions

*all but agencies, two are private pension plans.
None are affiliated with any of the parties involved.
No individual officers*



Market Value	\$184 million
Debt	\$164 million
EQUITY	\$20 million