[redacted]

January 17, 1995

PRIVILEGED AND CONFIDENTIAL

[redacted]

VIA HAND DELIVERY

FEDERAL TRADE COMMISSION
Premerger Notification Office
Bureau of Competition
Room 303
Washington, D.C. 20580

Subject: Hart-Scott-Rodino Act Notification

Dear Sir or Madam:

The Hart-Scott-Rodino Act (the "Act") requires that any person who acquires the assets of any other person and meets the threshold requirements of the Act must file a premerger Notification and Report Form (the "Notification"). Accordingly, this letter is to request confirmation that, based on the terms of the transactions specified below (collectively, the "Transactions"), the requirements of the Act are not met and, as such, the Notification need

1. **Parties to the Transactions.** The purchaser is a corporation (the "Acquiring Person") unaffiliated with any of the sellers. The sellers are (a) three corporations, two of which (the "Subsidiaries") are controlled by the third corporation (the "Parent Corporation") and (b) a limited partnership (the "Acquired Partnership").

The Parent Corporation has approximately 100 [illegible]

(collectively, the "Investors"), none of whom individually or collectively [illegible] a five percent (5%) interest in the Parent Corporation, (b) has the right to control the board of directors of the Parent Corporation or (c) has the right to control or vote fifty percent (50%) or more of the voting securities of the Parent Corporation.

The general partners of the Acquired Partnership are identical to the Investors. (Any limited partners are family members or entities established for the benefit of family members of the general partners.) As with the Acquired Corporation, none of the Investors [redacted] more of any profits or assets upon dissolution of the Acquired Partnership.

[redacted]

a. **Asset Acquisition.** The Acquiring Person proposes to purchase substantially all of the assets (collectively, the "Assets") of the Parent Corporation and the Subsidiaries (collectively, the "Acquired Corporation"). For the Assets, the Acquiring Person expects to pay an amount of less than FOURTEEN MILLION AND NO/100 DOLLARS ($14,000,000). Upon the acquisition, most, if not all, of the Investors and employees of the Parent Corporation (of which there are over 500) are expected to be employed by the Acquiring Person. The Investors will sign employment agreements, which are expected to [redacted] provision may vary, depending on each particular shareholder. In addition, certain of the Investors (and certain key employees of the Acquired Corporation) may receive incentive [redacted] together with the covenants not to compete, to ensure that the Investors (and other employees) become and remain employees of the Acquiring Person following the closing. Further, each of the Investors and all of the employees of the Acquired Corporation will receive credit for a specified number of years of service with the Parent Corporation in the Acquiring Person's defined benefit plan.

[redacted] Assets, the Acquiring Person proposes to purchase, based on current market appraisals, certain [redacted]

c. **Closing.** The closing of the Transactions is expected to occur on or before February 28, 1995, contingent upon the preparation of all required documentation and the completion of all appropriate due diligence.

d. **Chart/Outline.** For your ease of reference, the parties and the Transactions are charted on attached Exhibit "A."

3. **Analysis of the Act and the Notification.** Based on our analysis of the Act, as applied to the Transactions, we do not believe that the threshold requirements of the Act are met. As such, we believe that no Notification will be required. Our analysis can be [redacted]

a. **The Transactions should not be aggregated.** Each of the Acquired Corporation and the Acquired Partnership are their own "ultimate parent entity" within the meaning of the Act. "Ultimate parent entity" means an entity which is not controlled by any other entity. 16 C.F.R. 801.1(a)(3). In this context, the term "control" generally means, under 16 C.F.R. 801.1(b):

(i) Either

(A) holding fifty percent (50%) or more of the outstanding voting securities of an issuer; or

(B) having the right to fifty percent (50%) or more of the profits of the entity, or having the right in the event of dissolution to fifty percent (50%) or more of the assets of the entity; or

(ii) having the contractual power presently to designate fifty percent (50%) or more of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions.

Neither is the case here. As a result, the purchase of the Property from the Acquired Partnership should not be aggregated with the purchase of the Assets from the [redacted]

(b) **The Purchase Price for the Assets excludes the value/amount** [redacted]

Acquiring Person proposes to pay each individual Investor an incentive bonus. As stated, the [redacted]

[redacted]

[redacted] As indicated above, the Investors and any employees of the Acquired Corporation are expected to receive, in connection with their employment with the [redacted] Service Credit"). The exact value of the Prior Service Credit has not yet been determined.

[redacted]

the purchase price to exceed the "size of the transaction" threshold.

(d) **Conclusion and Understanding.** In conclusion, and with [redacted]

either the Acquiring Person or the Acquired Corporation may be engaged in an [redacted]

ii. [redacted]

iii. The "size of the transaction" test likely will not be satisfied in either of the Transactions, because (A) the total consideration for the Assets [redacted]

iv. The fact that the Investors of the Acquired Corporation and the partners of the Acquired Partnership are identical does not require that the Transactions with each of the Acquired Corporation and the Acquired Partnership be aggregated for purposes of the Act. As indicated, none of the

[redacted]

v. Neither the covenants not to compete or the incentive bonus provisions of any employment agreements signed by the Investors nor the Prior Service Credit are considered or affect the "size of the transaction" test set forth in subparagraph (d)(iii), above.

Please confirm our understanding that the requirements of the Act are not met and, accordingly, no filing of the Notification is required. If you have any questions or need any further information, please do not hesitate to call.

[redacted]

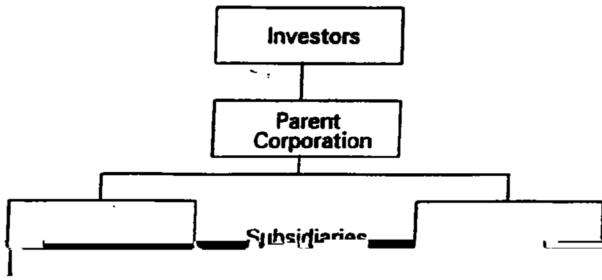
As the parties are anxious to proceed with the Transaction, your prompt attention to this request would be greatly appreciated. Please direct any response or inquires to the undersigned.

Respectfully submitted,

[redacted]

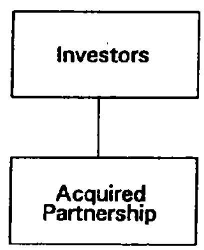
cc: Mr. Philip M. Eisenstat
Federal Trade Commission

1. Acquired Corporation



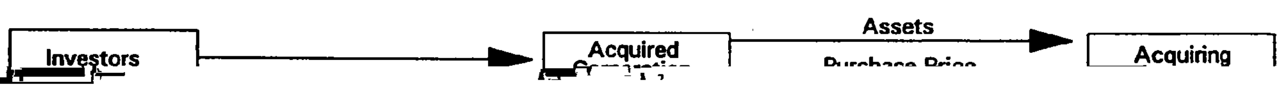
[redacted]

2. Acquired Partnership



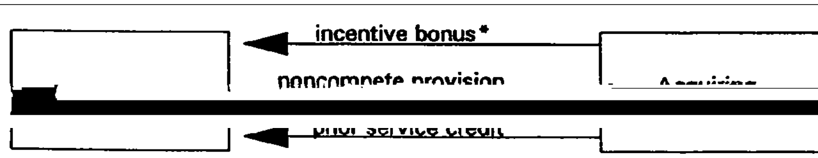
3. Transactions

a. Asset Acquisition



b. Property Acquisition

c. Employment of Investors



[redacted]

* Note that certain key employees of the Acquired Corporation also may receive incentive bonuses.

** Note that all of the employees of the Acquired Corporation, in addition to the Investors, will receive the Prior Service Credit.