§802.4

[redacted]

JK

Answered 25 april, '95

[illegible]

BY TELECOPY

Jeffrey Kaplan, Esq.
Staff Attorney [illegible]

This material may be ... confidential ...

[illegible]

Dear Jeffrey:

This letter confirms our conversation regarding the applicability of the Hart-Scott-Rodino Antitrust Improvements Act, codified at 15 U.S.C. § 18a (1990) ("H-S-R Act"), and the rules [illegible]

A, an individual, will be selling to Company B all of the voting stock of Company C and its affiliates that he holds in return for voting securities in Company B[1]. The market value for the voting securities that A will receive in Company B is [illegible]

Company B, A agrees that he will not, without the prior written consent of the board of directors of Company B, do any of the following:

(1) except to the extent provided for as part of this acquisition or as a result of Company B distributions of

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[1]The acquisition of assets, voting securities, and merger of Company C and its affiliates by Company B will be reported under the H-S-R Act by the parties.

[redacted]

stock in the future, acquire, agree to acquire, or make any proposal to acquire, any additional voting securities (including options) in Company B that would result in A owning more than 5% of the voting securities of Company

or a portion of the assets of Company B or its affiliates;

(3) make, or in any way participate in, directly or indirectly, any "solicitation" of "proxies" (as such terms are used in Regulation 14A promulgated under the Exchange Act);

(4) form, join, or in any way participate in a "group" (within the meaning of Section 13(d)(3) of the Exchange

(5) otherwise act, alone or in concert with others, to seek to control or influence the management or policies of Company B (except for A shall be permitted to (i) vote as a holder of voting securities of Company B in

as a shareholder that in good faith are not intended to have the purpose or effect of avoiding the requirements of this provision); or

(6) advise, assist or knowingly encourage any other person from doing any of the foregoing acts.

Pursuant to the terms of a Supplemental Agreement, Company B agrees to cause A to be appointed for a term of

interest, subject to early termination if: (1) A's ownership of Company B stock drops more than 50%; and (2) A acquires an interest in any competitive business. The Operating Committee functions in an advisory capacity with respect to the operations of Partnership B, but does not have any specific right to take any actions on behalf of the Partnership B. There are presently 12 members of the Operating Committee.

As we discussed, you concurred that given the above facts, A's receipt of the voting securities of Company B would not be subject to the notification and reporting requirements of the H-S-R Act. Although the reporting threshold of 15 U.S.C. §18a(a)(3)(B) will be met given that the voting securities being obtained by A have a value of approximately $700 million, you agreed that the type of

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the exemption specified in 16 C.F.R. §802.9. First, as specified in the "solely for investment purposes" exemption, A's holdings in Company B will clearly be below 10%. Second, the restrictions imposed upon A under the terms of the Shareholder Agreement are indicative of the desire of the parties to limit A's role in Company B to that of a passive investor. Finally, you agreed that A's appointment to the Operating Committee of Partnership A would not negate the applicability of the exemption for the obtaining of

[redacted]

Please let me know as soon as possible if I have in any way misunderstood your guidance regarding the nonreportability of this transaction. As always, I appreciate the assistance of the staff of the Premerger Notification Office.

Sincerely,

[redacted]