§ 801.1(b)

[redacted] to the

[redacted] which restricts

[redacted]

[redacted]

VIA FACSIMILE and
CERTIFIED MAIL

Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th St. and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Attn: Tom Hancock, Esq.

Re: Request for Informal Interpretation

Dear Mr. Hancock:

This letter will confirm the telephonic responses that we received from you yesterday with respect to our telephonic request for informal interpretations of the application of the concept of "control" as defined at 16 C.F.R. § 801.1(b) of the Federal Trade Commission's premerger notification rules (the "Rules") implementing the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR").

As a factual matter, [redacted] and I informed you that we are representing a foreign limited partnership (the "Partnership") in the sale of its assets. As a preliminary legal matter, we confirmed with you our understanding that the question of whether the Partnership is "controlled" by another entity for purposes of an HSR notification is governed exclusively by 16 C.F.R. § 801.1(b)(1)(ii), which in application provides that another entity will be deemed to "control" the Partnership if that entity either (1) has the right to 50 percent or more of the [redacted]

Partnership's assets. We then informed you as a factual matter that there is a foreign company (the "Company") which presently holds an interest in the Partnership above 50 percent (the

[redacted]

Question One

[redacted]

which independently has the right to receive 50 percent or more of the profits or assets on dissolution of the Partnership. The Company is required by law to divide and distribute all distributions of profits that it receives from the Partnership immediately to each of its investors in accordance with their

[redacted]

Partnership Interest "in street name" on behalf of the investors, who are the beneficial owners of the Partnership Interest.

[redacted]

or assets received from the Partnership.

QUESTION: Does the Company "control" the Partnership for purposes of an HSR notification?

RESPONSE: You responded that, for HSR purposes, the Company holds the Partnership Interest as an agent of the investors, and that the Company would not be deemed to "control" the Partnership under the Rules.

Question Two

[redacted]

[redacted]

consummation of the sale of the Partnership's assets.

QUESTION: Can "control" of the Partnership for HSR notification purposes be determined on a fully diluted basis as if the Warrant had been exercised?

[redacted]

filing of the HSR notification form, the Warrant will definitely be exercised at or before the consummation of the acquisition, then "control" can be determined on a fully diluted basis (i.e., as if the Warrant had been exercised). If, however, as of the date of filing of the HSR notification, the Warrant will not definitely be exercised at or before the consummation of the acquisition, then "control" cannot be determined on a fully diluted basis.

Please contact the undersigned as soon as possible if you believe that any of the foregoing does not accurately reflect the informal interpretations that we requested or that you provided. If we do not hear from you, we will assume that the foregoing is accurate.

Thank you very much for your assistance.

Sincerely yours,

[redacted]

[redacted]

cc: [redacted]

5/2/95

Called [redacted] and told him that I had attached [illegible] PNO and that we were with the conclusion

[illegible] Con

[illegible]

T F H