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[REDACTED]

March 29, 1996

**BY TELECOPY**

Richard Smith, Esq.  
Senior Attorney  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
6th Street and Pennsylvania Avenue N.W.  
Washington, DC 20580

Re: Joint request to FTC for Informal HSR Interpretation

Dear Mr. Smith:

The enclosed Joint Request for an Informal Interpretation is submitted by us, as counsel for the acquired person, and by [REDACTED] as counsel for the acquirer. The facts and the issue on which we request your early attention to this request because the parties have been proceeding on the understanding that [REDACTED]

parties have been proceeding on the understanding that [REDACTED]

Thank you very much for your [REDACTED]

[REDACTED]

[REDACTED]

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## JOINT REQUEST TO FTC FOR INFORMAL HSR INTERPRETATION

[REDACTED] LLP's client is a limited partnership that was formed in October 1995 in order to make investments in attractive businesses from time to time (the "LP"). The LP is now ready to make its first investment. It will be acquiring the assets of an operating division of a corporation [REDACTED]

operations (the "Corporation"). The Corporation's assets exceed \$100 million.

The LP has no ultimate parent. Its fiscal year is the calendar year and its audited regularly prepared balance sheet

and its income statement showed income of less than \$100. The LP

has the right to call upon its partners as needed from

time to time to make investments. The LP also has unaudited regularly prepared monthly financials, and the balance sheet of January 31, 1996 shows assets of approximately \$2 million.

The proposed acquisition of assets will exceed \$15 million in value and will be financed both by calling on the LP's partners to contribute funds and by bank financing.

In preparation for the acquisition [REDACTED] LLP has organized on behalf of the LP an acquisition corporation and a holding corporation, neither of which has any assets or has issued any stock. At the closing of the acquisition of assets it is contemplated that the LP would contribute funds from the partners to the holding corporation, in exchange for shares of

those funds to the acquisition corporation, in exchange for its stock. The acquisition corporation would then use those funds

Corporation. These events would all occur concurrently.

The issue that has been raised is whether 16 C.F.R. § 801.11(b)(1) is applicable so as to require recomputing the LP's balance sheet to include the funds to be used by the acquisition subsidiary to acquire the assets. That section includes the

statements, the annual net sales and total assets of

It is our position that § 801.11(b)(1) was not intended to

for the purpose of closing a deal. Rather, the regulation is

prepared financial statements and is about to make another acquisition, and, second, where a company has an operating subsidiary that for some reason was not included in its consolidated financial statements.

merger notification. A financial entity, the LP, with no operations is about to draw in cash from its partners and banker to acquire operating assets. There is no combination of any possible antitrust significance. As the SBP stated in discussing

the promulgation of § 801.11(e), that rule "is appropriate because transactions that may pose an antitrust concern are those

That the LP will hold the assets through corporations rather

fact, if the holding corporation and the acquisition corporation had been created during February and had issued stock for nominal consideration, the "consolidated" balance sheet of the LP would

have stated the same total assets as did the actual balance sheet aimed at situations in which the existing balance sheet fully discloses all assets of the relevant party, in this case the LP. Rather, as stated above, that section was aimed at requiring

disclosure of assets of an operating entity that had been [REDACTED] that had been controlled by the [REDACTED] all along but had

The policy of § 801.11(e) is that capital injected for

acquisition is of no antitrust concern.

borrowed or otherwise received money to make a transaction where

date of issuance the threshold would be crossed. So far as we

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is required.

Because the parties have been proceeding on the understanding that filing was not required and would have to scramble if they are required to file, we would greatly appreciate hearing your decision as soon as possible. Thank you very much for your cooperation.