

[REDACTED]

Not an asset purchase subject to 801.10 formation of a partnership and for

ATTORNEYS AT LAW

MEMORANDUM

September 2, 1998

TO: Patrick Sharpe
CC: [REDACTED]
FROM: [REDACTED]
RE: HSR Advice Re Partnership Transactions

2, 1998, and our subsequent telephone conversation on Friday. As we understand it, your office now believes that the transaction described in my memorandum of September 2, 1998 (attached) may be subject to HSR reporting. While we will obviously accept this advice if it is your final word, we want to explain the reasons why we believe that no filing should be required.

At the outset, and while not technically relevant, we assure you that this is not an antitrust-sensitive transaction. The acquisition is of timber assets in the Pacific Northwest and no one would suggest the parties hold collectively an anticompetitive percentage of the

Further, as I advised you Friday, we want to make a factual correction to my memorandum of September 1, 1998. Although the closing will occur on the same date, I am informed that the various transactions described will not technically be simultaneous. The first step is that the new investors will contribute cash to the new partnership. The second step is that the new partnership will purchase for cash about 38% of the partnership interests in the old partnership from its existing partners. The final step is that the existing partners will then contribute the remaining 62% of the interests in the old partnership to the new partnership in exchange for a 62% interest in the new partnership, thus completing the formation of the new partnership.

Analysis.

[REDACTED]

transaction is essentially equivalent to a transfer for cash of a 38% interest in the existing partnership — a transaction that obviously would not be subject to reporting. At the end of the day the existing partners will own approximately 62% of the new partnership, the new

Second, the proposed transaction is also equivalent in substance to an HSR

All of these transactions should be treated as exempt from the Sherman Act. The

Finally, for HSR purposes, the form of the transactions should all be treated as exempt as well. All that is occurring in this transaction is the formation of a new partnership (which is exempt) and the sale of a minority partnership interests in the old partnership (which is also exempt). We are aware of the Premerger Office's position that a transfer of assets undertaken prior to the formation of a partnership may be subject to reporting (if otherwise covered by the rules) notwithstanding that the transferred assets will be contributed to the partnership and that both the seller and buyer will be partners. However, in the current circumstances, the sale is not of assets but rather of 38% of the partnership interests in the old

subject to HSR reporting.

Alternative Form of Transactions.

As I informed you Friday, an alternative form for these transactions has also been under active consideration. This alternative form consists of (1) the sale of investors of a 38% interest in the old partnership directly from the existing partners, followed by (2) a contribution by both the original partners and the new investors of all of the

Patrick Sharpe
September 8, 1998
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confirmed by you in our conversation, that this alternative format would not involve a filing. Both the sale of the partnership interest and the subsequent formation of the partnership would be exempt. We would appreciate confirmation of this advice. However, please do not view this advice as a "solution" to the problem, since the first approach described above may well be the approach taken, regardless of HSR issues.

very much appreciate your cooperation.

called [redacted] 9/14/98 -
this is a formation of a partnership
and is not reportable under H-S, h,
and not reportable under H-S, h,

(PS)

R.S. - concurs.