[redacted]

June 29, 1999

Mr. Richard B. Smith, Esquire
[redacted]

Re: *Sale of several separate businesses to individual limited partnerships with identical ownership.*

Dear Mr. Smith:

[redacted]

plans since our conversation, which I do not believe change the outcome.

[redacted]

joint venture that will, among other things, complete the construction and development of certain health care facilities begun by H1 or H2, and assume management responsibility for certain newly completed facilities. To carry out their joint venture, H1 and H2 recently have formed a limited liability company, JVLLC, in which each of them has the right to receive 50% of the profits and 50% of the assets upon dissolution. H1 and H2 have only funded JVLLC to the extent of a few [redacted] previously carried on any significant business activities, nor has it prepared an income statement or balance sheet.

H2 plans to arrange for the sale of its interests in the assets of up to 14 [redacted] that H2 could sell each of the facilities to a newly organized limited partnership.

[redacted]

and that each limited partnership could be owned 90% by a group of investors and

[redacted]

A financial advisor with whom H1 has raised capital in the past has [redacted] (together, the "Investors"), each of whom may wish to invest in the facilities that will be sold. Each Investor is an accredited investor under the securities laws, or an entity all of whose equity owners are such accredited investors. The financial advisor also will be a limited partner, and its capital contribution will be funded by JVLLC essentially in lieu of a "placement fee."

The characteristics of the 14 LPs are described in a subscription agreement [redacted] distributions relating to later-contributed capital to be slightly less than distributions on earlier-contributed capital. The parties anticipate that all capital will be contributed within a six month period. Capital accounts will be maintained so that the limited partners, taken together, will have 90% and the general partner [redacted] be substantially identical for each of the 14 LPs.

[redacted] aggregated under the premerger notification law, no such aggregated group of limited partners will have an ownership interest of as much as fifty percent of any LP. These relationships are: (a) an individual limited partner being the spouse or minor child of another limited partner; (b) a limited partner holding as much as

[redacted]

dissolution of, another limited partner that is a partnership or limited liability company; (d) a limited partner having the power to revoke a trust that also is a limited partner; and (e) a limited partner retaining a reversionary interest in an irrevocable trust that also is a limited partner. In other words, under the premerger notification law none of the limited partners, nor any group of limited partners, would be the ultimate parent entity of any of the LPs, and each LP would be its own ultimate parent entity.

[redacted]

management authority for each LP, except that the general partner may not sell an LP's facility without consent of a majority in interest of the limited partners.

In addition, the limited partnership agreements provide that two years after the first resident occupancy of a facility, the limited partners by a majority in interest vote may require the general partner to attempt to sell the facility. During

option," exercisable by a majority in interest vote of the limited partners in any LP,

partnership agreements also provide that it shall have a "call option" to purchase

[redacted]

At the time that each of the LPs will acquire one of the facilities from H2, each LP will be a newly created limited partnership which has no significant assets other than funding to acquire one of the facilities. Each LP will have the right to call upon its limited partners and general partner for capital contributions totaling less than $10 million, and to borrow additional funds to acquire one facility. [redacted]

none of the LPs has engaged in business operations.

The LPs initially will borrow funds from H2 pursuant to a "bridge" loan, but [redacted] hope to borrow replacement and additional funds from commercial lenders. The LPs also may borrow from JVLLC or H1. H1 and H2 jointly will guarantee the bank debt of each LP. The parties anticipate that each LP will be jointly and severally liable for the debt of the other LPs, and that debt incurred by each of the LPs will be cross defaulted and cross collateralized with the debt of the other LPs. That is, if any one of the LP's goes into default on a loan, the lender would be entitled to declare each of the other 13 LPs also in default. The parties anticipate that the joint and several liability, cross default and cross collateralization provisions will enable the LPs to borrow at lower interest rates than they could obtain without these terms.

We [redacted]

person" standard of the premerger notification laws. The assets transferred to JVLLC so far also do not satisfy the $15 million "size of transaction" standard of the premerger notification law.

H1 and H2 are both ultimate parent entities of JVLLC, but we believe they are not required to make premerger notification filings as acquiring parties when H2 sells its interests in the 14 facilities to the LPs. This is because JVLLC's right [redacted]

H2, the management agreements between the LPs and H1, and JVLLC's role as [redacted]

[redacted]

acquisition) or annual net sales. Therefore each transaction fails to meet the "size

[redacted]

In addition, the parties have determined that the value of each of the 14 asset sales is below $15 million, whether valued with reference to the fair market value of [redacted] consideration paid for the assets of each facility. Because of the developmental [redacted]

[redacted]

transactions also falls short of the $15 million "size of transaction" standard of the premerger notification law.

The transactions described above might be subject to a premerger notification filing obligation if one were to aggregate together the total "size of person" represented by some or all of the LPs, and the total "size of transaction" represented by the acquisition of the assets of some or all of the facilities. It would not be correct to aggregate either of these quantities, however, because although each of the LPs will have substantially identical ownership, each will be a separate and distinct legal entity. The parties benefit from the limited partners' willingness [redacted]

[redacted]

entirely apart from the premerger notification consequences.

Since our conversation, the parties have added provisions that the limited partners may vote to require sale of the facility owned by each LP under certain [redacted]

[redacted]

[redacted]

[redacted]

telephone conversation, you did not disagree with my conclusion that they do not

[redacted]

Very truly yours,

[redacted]

7/1/99 Called writer and advised that, based on facts in letter, no HSR reportable event or events intervening place. (MV agreed with conclusion.)

RBSmith