

802.9

[REDACTED]

[REDACTED]

WRITER'S DIRECT LINE

[REDACTED]
(FAX [REDACTED])

September 7, 1999

BY FAX

Richard Smith, Esq.
Michael Verne, Esq.
Premerger Notification Office
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

applicability of the Hart-Scott-Rodino Act to the facts outlined below. I would appreciate your confirmation that this letter, as revised in accordance with your suggestion, accurately reflects our conversation.

FACTS

Company X, a leveraged buyout firm, has organized two funds,

[REDACTED]

most if not all of the same individuals who are partners in Fund A's general partner.

Funds A and B will be acquiring from Issuer all of a new class of stock which carries the right to elect 2 of Issuer's 13 directors. Fund A will be acquiring approximately 30% of the class, accounting for approximately 5% of Issuer's voting securities, and Fund B will be acquiring the remainder. Fund A cannot on its own elect a director. It is contemplated that the two directors elected

[REDACTED]

[REDACTED]

Richard Smith, Esq.
Michael Verne, Esq.

- 2 -

September 7, 1999

by the new class will be principals in Company X who are also general partners in the general partnerships which are themselves the general partners of Funds A and B respectively.

ANALYSIS

On these facts, you have advised that Fund A is entitled to claim the investment exemption. The rationale for this advice appears to be that Company X's intent to be actively involved in Issuer's management (including service by two of Company X's principals on Issuer's board) will not be imputed to Fund A -- even where the contemplated board members are general partners of the partnership which is Fund A's general partner. [REDACTED]

Please call to let me know if I have accurately reported our conversation.

Sincerely,

[REDACTED]

[REDACTED] AGREE - THIS IS EXEMPT AS SUCH FOR PURPOSE OF INVESTMENT. R. SMITH CONCURS

Michael Verne
9/8/99