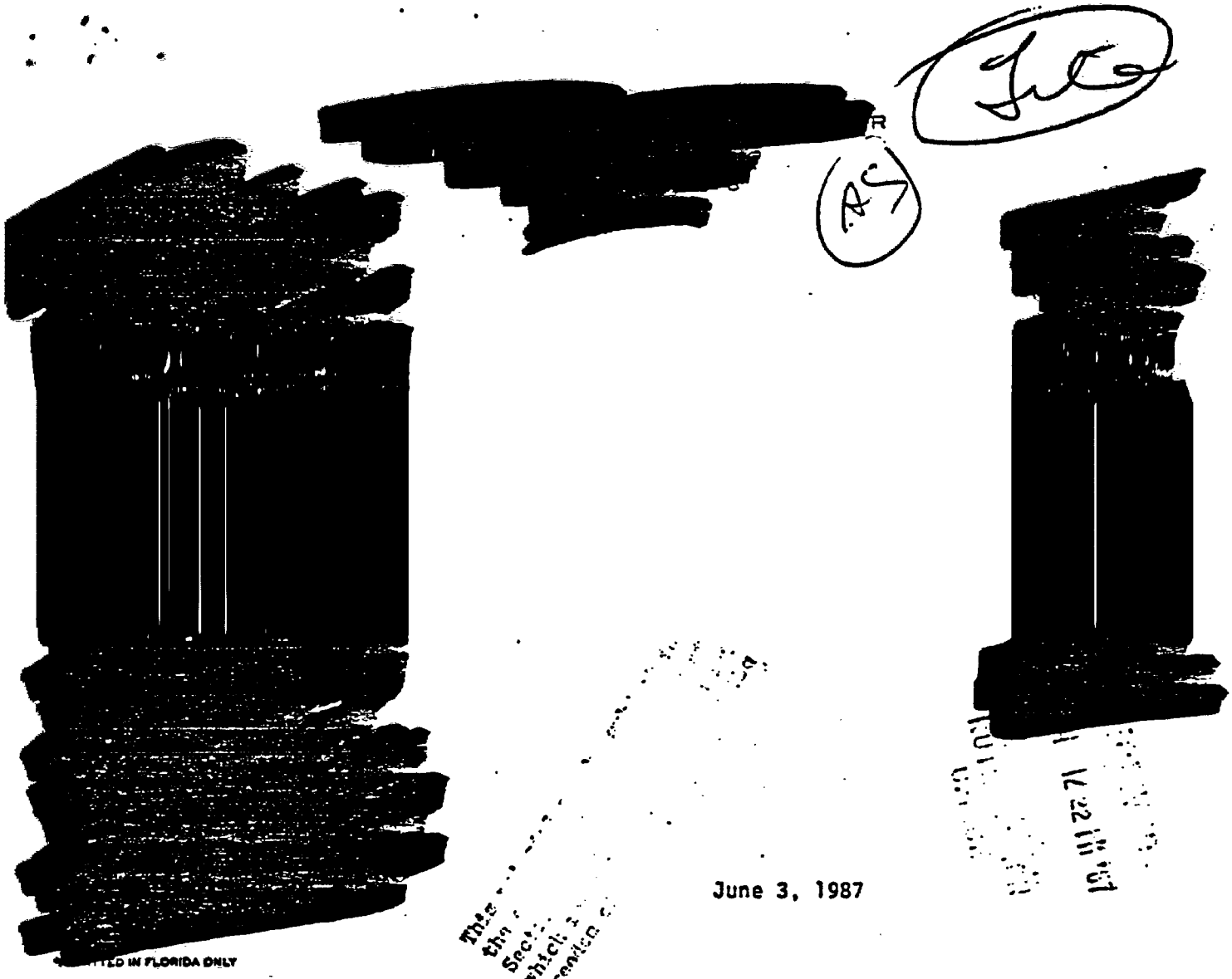

June 3, 1987

VIA FEDERAL EXPRESS

Andrew Scanlon, Esq.
Federal Trade Commission
Room 303
6th Street & Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Hart-Scott-Rodino Antitrust Improvements Act of 1976 - Request for Interpretation and Advice

Dear Mr. Scanlon:

As you suggested during our recent telephone conversation, I am writing to request advice as to whether the HSR Act applies to a proposed transaction which involves the investment by several foreign pension plans in a new corporation which will purchase partnership interests in an existing partnership.

The parties to the proposed transaction are set forth in the diagram attached hereto as Exhibit A. In that diagram: "X" is an existing partnership which owns a parcel of real estate on which is situated a

pension plan for employees of corporation "C" (see Exhibit B for a description of "P-1" prepared by counsel to "C"); "P-2", "P-3" and "P-4" are foreign pension plans for employees of corporation "D" (see Exhibit C for a description of "P-2", "P-3" and "P-4" prepared by counsel to "D"); and "J" is a U.S. issuer (a corporation) which is proposed to be created.

The proposed transaction is the following: "J" will be created and its shareholders will be "P-1", "P-2", "P-3" and "P-4". The aggregate investments of "P-1", "P-2", "P-3" and "P-4" in "J" will be approximately $40,000,000. The cash contributions of each participant will be 75% in the form of a loan and 25% in payment for voting common stock (i.e., a total of $30,000,000 will be advanced to "J" as loan and $10,000,000 will be contributed to "J" in payment for common stock). The contributions to be made by each individual participant have not been finally decided upon. Using the funds which "P-1", "P-2", "P-3" and "P-4" have invested in it, "J" will purchase from "B" some (but not all) of the partnership interests which "B" holds in "X" for approximately $40,000,000. To my knowledge, the foregoing cash amounts constitute the entirety of the assets which "P-1", "P-2", "P-3" and "P-4" have agreed to transfer to "J" and that none of such contributors has agreed to extend or guarantee any amount of credit of obligations of "J". I understand that "J" will engage in no other activity other than holding partnership interests in "X".

It is my understanding that the only part of the proposed transaction which may be subject to the notification and waiting requirements of the HSR Act under the HSR Rules presently in effect is the formation of corporation "J", a corporate joint venture. The purchase by "J" of partnership interests in "X" from "B" are not (as I understand it under the HSR Rules presently in effect) subject to the HSR Act since upon conclusion of such purchase, interests in "X" will be held by at least two persons ("A" and "Z"). As you have explained to me, the FTC presently considers a transaction involving transfer of interests in a partnership at the conclusion of which the interests in the partnership are held by two or more or more "persons" to be neither a transfer of assets nor of voting securities.

As we discussed on the telephone, whether or not the formation of "J" is subject to the HSR Act may turn on whether or not "P-1", "P-2", "P-3" and "P-4" are "controlled" by "Z" and therefore part of person "Z" or are their own "persons". The descriptions of "P-1", "P-2", "P-3" and "P-4" set forth in Exhibits C and D will hopefully provide you with a basis for a determination as to whether or not each of them is within the person of "Z".

Section 802.41 states that "J" would have no filing obligation in connection with its formation. If "P-1", "P-2" "P-3" and "P-4" are "controlled" by "Z" and therefore within the "person" of "Z", Section 801.40 indicates that no filing would have to be made by any party acquiring voting securities in "J" since all acquiring parties are within the "person" of "J" and there is therefore no joint venture.

Further, if "P-2" is separate "person", § 801.40 indicates that since "P-2" has total assets of less that $100,000,000, "P-2" would not have any filing obligation in connection with the formation of "J". Accordingly, the parties which may have a filing obligation under § 801.40 in connection with the formation of "J" are "P-1", "P-3", "P-4" and "Z".

Based upon the foregoing, I would appreciate your advice as to which (if any) of the above-mentioned parties will have an obligation to observe the notification and waiting period requirements of the HSR Act. Particularly, I would like your advice as to:

a) What the applicable criteria are for determining whether any of the "persons" participating in the above-described transaction would qualify for the "minimum dollar value" exemption of § 802.20. Apparently, any "person" which paid $15,000,000 or less for common stock of "J" and did not acquire "control" of "J" would be eligible for this exemption. I am unsure, however, whether if one of the participating "persons" were to pay less than $15,000,000 for 50% or more of the common stock of "J" whether the acquisition of such interest would be, nonetheless, exempt on the grounds that "J" would be a newly formed entity without an existing balance sheet which would be paying out to"X" the entirety of the $40,000,000 contributed to it.

(b) What the applicable criteria are for determining whether any of the subject "persons" qualifies for the "acquisition of real estate in the ordinary course of business" exemption of § 7A(c)(1) of the HSR Act.

(c) What the criteria are for determining whether an employee pension plan is a separate "person" or part of the "person" of the employer.

(d) Whether the participants of the above-described transaction might qualify for any other exemption.

If you require any further information, please do not hesitate to call me.

I would appreciate a response by telephone at your earliest convenience. Thanks in advance for your time and consideration.

Very truly yours,

[redacted]

See revision of this transaction outlined in letter dated 6/9/87 AMS

6188C

EXHIBIT A

Diagram of Proposed Transaction

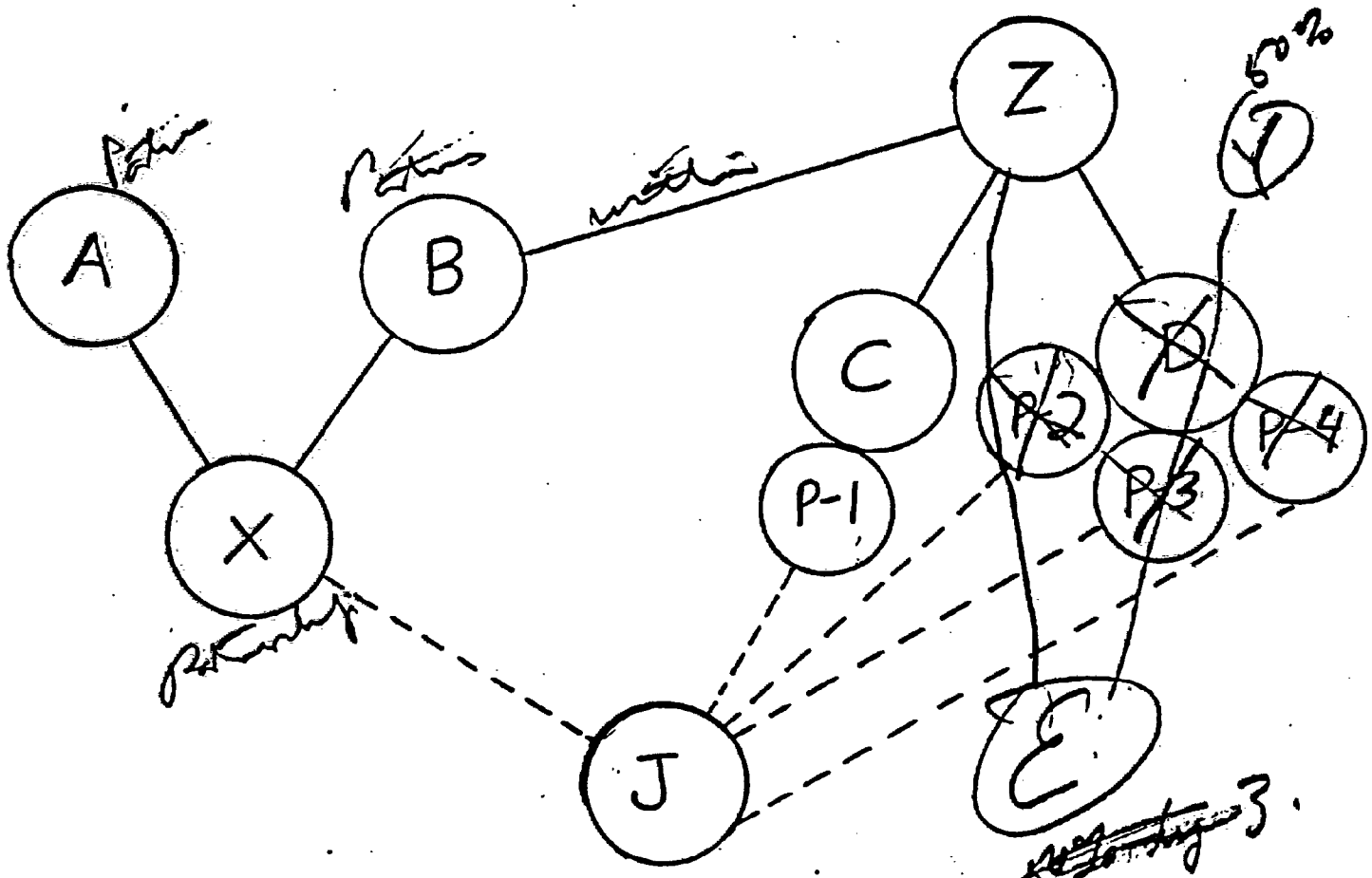

EXHIBIT B

Description of P-1

1. Under the law of its foreign jurisdiction, the plan referred to as P-1 Plan does not have separate legal existence. It is not a legal entity. The assets of P-1 are presently in excess of $100,000,000.

2. The plan referred to as P-1 is a shorthand description for a set of assets and liabilities and a kind of separate accounting entity.

3. It is the Trustee who has legal capacity and who "speaks for" and "deals with" P-1.

4. The rights and liabilities of the Trustee are established by the relevant trust instrument which, in this case, was made between "C" Corporation which is the principal employer and the Trustee.

5. The legal rights and liabilities of "C" Corporation as principal company under the Trust Deed are limited to those matters set out in the Trust Deed.

6. The powers and rights of "C" Corporation under the Trust Deed are confined to the following:

   (a) It has the power to remove the Trustee or to appoint additional trustees. (However, the Trustee must, at law, satisfy its fiduciary obligations and cannot be the mere nominee of "C" Corporation.)

   (b) It can bring about the termination of the Plan by discontinuing contributions or by initiating its own liquidation. (Either of those courses results in the winding up and distribution of the net assets of P-1.)

7. As a matter of contract law, any variation to the Trust Deed will require the agreement of both "C" Corporation and the Trustee. To that extent, therefore, "C" Corporation could frustrate the wishes of a trustee who seeks to vary the terms of the Plan. However, in such a case, the Trustee would apply to the Equity Court for appropriate assistance.

8. The Trustee has bare legal title to the assets of P-1 which it holds on trust for the members of P-1 in proportion to their relevant interest from time to time. The Trustee does, however, have a right

EXHIBIT B (cont.)

of indemnity against the assets of P-1 in respect of liabilities properly incurred by him as Trusteee. The Trustee does not have any such indemnity from "C" Corporation (either contractually or at law).

9. None of the P-1 assets can revert to "C" Corporation. In the event of change of trustee the legal title passes to the new trustee but the equitable or beneficial interest of the members from time to time remains unaffected.

10. "C" Corporation has no discretion as to the admission of members to P-1 and, once admitted, cannot (in its capacity as the principal employer under P-1) change the beneficiaries or their interests. Of course, as the employer in an employer/employee relationship, "C" Corporation can dismiss employees who thereupon cease to be members (and who, depending upon the circumstances of the dismissal, will obtain no or reduced or full benefit). Even if the Trustee was such a subsidiary, its fiduciary duties in respect of P-1, would, at law, prevail over other competing duties or interests.

EXHIBIT C

Description of P-2, P-3 and P-4

1. Each of these three Plans has a sole corporate trustee but "P-4" has a separate Committee of Management referred to below. The shares in each of the trustee companies for "P-2" and "P-3" are held in the names of nominees, but the beneficial owner of the shares in each case is "D" corporation.

2. The existing Articles of Association of the trustee companies for "P-2" and "P-3" have provisions regarding the composition of their Boards of Directors. Under the Articles of the trustee company for "P-2", there have to be 12 directors, of whom 6 are "D" Corporation nominated directors and 6 are plan participants. In the case of the trustee company for "P-3", the Articles provide that the number of directors is to be not more than 11, of whom 6 must be "D" Corporation nominated directors and 5 must be plan participants.

3. Each of the three trustee companies is entirely separate from "D" Corporation in that its sole object and obligation is to act as trustee of its respective pension plan, acting in accordance with the Trust Deed and Rules of that plan. Thus the Directors of each trustee company, once appointed, act in a fiduciary capacity as Directors with a duty to procure that the trustee company acts in accordance with the Trust Deed and rules of each of the two Plans. Under these Trust Deeds and Rules each trust company is subject to a number of duties and obligations and also has a number of powers or discretions. In carrying out its duties and exercising its powers, the trustee companies have to act in accordance with the best interests of the beneficiaries. In a matter concerning investment, the trustees have to take decisions solely on investment considerations and would in practice have regard to the advice of their investment advisers and actuaries.

4. In certain cases under the Trust Deeds and Rules, of which the power to amend is an example, the trustees have a power which requires the consent of "D" Corporation.

5. "D" Corporation has no control over the Directors of the trustee companies once appointed, save the technical fall-back of removal of such a Director.

6. The difference in the case of "P-4" is that the trustee company acts solely as a custodian trustee of that plan's assets. The administration and management of "P-4" is vested in a committee of 12, six of whose members are nominated by "D" Corporation and six are

EXHIBIT C (cont.)

elected by the plan participants. The decisions on investment for "P-4" are taken by the committee. In the event of equality of votes, the Chairman of the committee (who is nominated by "D" Corporation as one of the six "D" Corporation nominees) has a second or casting vote.

7. "D" Corporation cannot itself benefit from the funds which are held as part of the pension plans. These plans are held on the trusts of those plans in accordance with the Trust Deed and Rules for the benefit of the beneficiaries. In the normal course, while the plans continue on a going concern basis, none of the funds of the plans can be paid back to "D" Corporation. In practice, the only situation under which funds which are part of the plans would be returnable to "D" Corporation would be in the event of a winding-up after all the winding-up priority steps have been exhausted; i.e. after the trustees had procured that all their duties under the Trust Deed and Rules had been completed and that their powers, for example, to purchase annuities for beneficiaries of the plan and to enhance pensions and other benefits up to the maximum limits allowed by the national taxing authorities had been exercised. Only at that point would a return of funds to "D" Corporation be made.

8. The approximate current value of the assets of each of these Plans is as follows: "P-2" - $72,000,000; "P-3" - $135,000,000; and "P-4" - $142,000,000.