"33" / Rule 1...

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March 21, 1972

Neal S. McCoy, Esq.
Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
Washington, D. C. 20549

Dear Mr. McCoy:

Re: American Garden Products, Inc.

This firm represents American Garden Products, Inc., a Delaware corporation ("American") the Common Stock of which is registered under the Securities Exchange Act of 1934 and Private Equity Associates, a New York limited partnership (the "Partnership").

The Partnership was established in 1968 to make venture capital and other investments and has invested in a number of situations since that time. Between December, 1968, and August, 1971, the Partnership acquired shares of the Common Stock of American in several transactions. In the organization of the Partnership, it acquired, in exchange for units of partnership interest, 28,182 shares from several persons who had acquired such shares from American in transactions deemed exempt from registration under Section 4(2) of the Securities Act of 1933 (the "1933 Act") during 1968. On August 29, 1969, the Partnership purchased 43,752 shares directly from American in another transaction deemed exempt from registration under Section 4(2) of the 1933 Act. (On December 3, 1969, 9,600 of the shares acquired in August were sold to The America Group Companies Fund, which took such shares for investment and not with a view to resale or distribution.) On April 21, 1970, the Partnership purchased 1,200 shares from a party which had acquired such shares for investment and not with a view to resale or distribution. In August, 1971, the Partnership acquired 9,135 shares in two separate transactions from parties who had acquired such shares for investment and not with a view to resale or dis-

tribution. All such acquisitions by the Partnership were for investment and not with a view to any resale or distribution.

In addition, in August, 1971, the Partnership purchased 63 shares in the open market in order to be able to make a distribution equally among its Partners.

Subsequently these shares have been transferred to the Partners of Private Equity Associates in accordance with the list attached hereto. We have been asked to advise American and the Partners of the Partnership whether under Rule 144 their holding period for the shares of American transferred by the Partnership runs from the date of original acquisition by the Partnership or from the date the shares were transferred by the Partnership to them.

It is our opinion that the Partners are entitled to tack the holding period of the Partnership on to their holding period and, therefore, should be deemed to have held the shares from the date of acquisition by the Partnership because the Partnership acquired the shares as a record holder and the beneficial interest in the shares was held by each of the Partners of the Partnership pro rata in proportion to their respective Partnership interests. While the shares held by the Partnership were not segregated or otherwise earmarked for each Partner, nevertheless through his specified Partnership interest each acquired a specified percentage of the shares acquired by the Partnership and could readily determine the number of those shares in which he had a beneficial interest.

From a practical point of view there would appear to be no reason for a different rule in a situation where the partnership distributes the shares and they are sold by the individual partners from the situation where the partnership sells the shares and distributes the proceeds.

Such an interpretation is also consistent with the concept developed in Rule 144 and in Securities Act Release No. 5223 that a person claiming a holding period should be subject to the full economic risks of investment during that holding period. A partner is subject to the economic risks involved in the investments of the partnership just as if he had made such investments directly.

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If each Partner held 10% or more of the interests in the Partnership the question would not arise as the Partnership would be included within the term person under paragraph (a)(2)(C) of Rule 144. At least in the partnership case, there seems no reason for a different result for those Partners owning less than 10% of the partnership interest.

We are not aware of any general ruling by the Commission or the Staff regarding the tacking of holding periods with respect to shares distributed to members of a partnership. However, it is our understanding that the Staff has taken a position consistent with this opinion.

Accordingly, we respectively request that you confirm our opinion and interpretation, as set forth herein, or advise us that if actions are taken consistent with such opinion the Staff will recommend that no action be taken by the Commission.

Please call me collect at (617) 742-9100 if you desire to discuss this matter or require additional information. I am enclosing herewith an additional six copies of this letter for the convenience of the Staff.

Sincerely,

Edwin M. Martin, Jr.