

801.1(b)
801.11

[REDACTED]

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March 17, 1989

This material may be subject to the confidentiality provision of Section 7A (b) of the Clayton Act, which rests on the public interest in the free flow of information.

Patrick Sharp, Esquire

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

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FEDERAL TRADE COMMISSION
OFFICE

Dear Mr. Sharp:

This will confirm our telephone conversation of March 16, 1989, in which you advised me as follows:

1. Determination of what persons are "included within" an entity, for the purpose of determining whether that person should be consolidated with the entity under 16 C.F.R. § 801.11 (b) (1) in establishing "size of person," is to be made as of the date the transaction at issue is proposed to be consummated. Our client, "X," had control of a corporation, "Y," at calendar (and fiscal) year end because, although "X" owned less than 50% of the outstanding voting securities of "Y," "X" had the contractual right presently to designate a majority of the board of directors of "Y."

and if, because of control by "X" over "Y," "Y" was a person "included within" "X" under 16 C.F.R. § 801.11(b) (1), "X" would have had more than \$100 million in sales and assets after consolidation with "Y." "X" will have disposed, however, of all of its voting securities in "Y," and of its rights to designate directors of "Y," before the transaction at issue is consummated. After disposing of "Y," the only substantial assets "X" will have will consist of cash, in an amount substantially less than \$100 million. "Y" will have had no sales other than those made

as having more than \$100 million in sales or assets.

2. The only "control" test applicable to a limited partner-
percent or more of the profits of the entity, or having the right
in the event of dissolution to 50 percent or more of the assets
of the entity"). The alternative test set forth in 16 C.F.R.
§ 801.1(b)(2) (right to designate a majority of directors or
individuals exercising similar function in the case of unincor-
porated entities) is not applicable to limited partnerships. as

rights described in 16 C.F.R. § 801.1(b)(1)(ii) would therefore

report in reliance, in part, on this advice. If I have misstated
or misinterpreted your advice, or if further information is

Sincerely

[Redacted signature block]

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