

## VIA FEDERAL EXPRESS

Mr. Patrick Sharpe Dramaras Matification Office

Washington, D.C. 20580

Dear Mr. Sharpe:

This letter serves to confirm our telephone conversation of Thursday,

partnership. The facts we discussed are as follows:

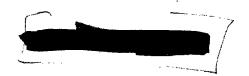
P-1, a partnership, has contracted to make an acquisition (the "Acquisition"). Date and Do has the right to at least 900% of the modition of D and the middle in the

P-2 has two partners, B and C. The P-2 partnership agreement establishes the following priority of payment upon dissolution of P-2:

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(i.e., the return of its capital contribution, plus an annualized 10% rate of return);

To C to the extent of any unpaid portion of its preferred return (c)



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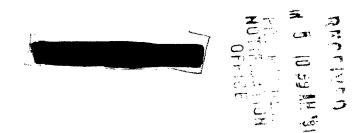
- (d) To the repayment of loans and advances made to P-2 by the partners;
- (e) To B and C in repayment of their respective capital accounts as adjusted for their respective shares of liquidating profits and losses, provided that no distribution to B may exceed the amount of its maximum return (i.e., return of its capital contribution plus an annualized 25% rate of return);
- (f) To B and C in equal proportions, provided that no distribution to B may exceed the amount of its maximum return; and
  - (g) The balance, if any, to C.

B is contributing 40% of the capital of P-2, and C is contributing 60% of the capital of P-2. If P-2 makes the Acquisition and then immediately winds up and dissolves, the net dissolution proceeds will flow roughly 60% to C and 40% to B pursuant to paragraphs (b) and (c) above.

With respect to profit allocations the D 2 northership account and the

- (a) 99% to B and 1% to C until B has been allocated profits equal to the losses allocated to it;
  - (b) 99% to B and 1% to C until B has received its preferred return;
- - (d) 100% to C until it has received its preferred return;
- (e) To B and C in equal proportions, provided that no profits will be allocated to B which would cause total distributions to B to exceed its maximum return; and

(f) 100% to C.



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The narties anticipate that neither P-2 nor P 1 will generate any profits in accounting sense for several years after the Acquisition and that profitability from a tax perspective is even more distant.

Given the facts set out above, it is my understanding that the rederal trade you the

believes that the percentage tests of 16 C.F.R. § 801.1(b)(1)(ii) should be applied as of the confectime of each potentially reportable acquisition. Thus, P-2 controls P-1 because liquidation of confection at particular to the confection of the confection of the confection at the confection of the c

Application of the profits test as of the time of the Acquisition does not, in itself, yield the conclusion that either B or C is in control of P-2. Although each of B and C will likely control P-2 from a profits standpoint at various points in the life of the

or our conversation.

from you to the contrary, I will continue to advise my client in accordance with the analysis

set forth above. Thank you for your consideration.

It does not

Sincerely yours,

and the last

of will be at the point of consummation. (B)

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This material may be subject to

Section 7A (n) of the Clayton act which restricts release under the Freedom of Information Act.