[redacted]

[redacted]

[redacted]

[redacted] January 23, 1992

Federal Trade Commission
Premerger Notification Office
[redacted]

Dear Mr. Smith:

The purpose of this letter is to confirm our telephone conversations of December 18, 1991 and January 14, 1992 in which you agreed that the merger or consolidation of three wholly owned partnerships of a company whose assets are valued at greater than $100 million (the "Company") into a newly formed wholly owned subsidiary of the Company ("Newco") would be exempt from the notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"). The relevant facts, as we discussed them, are as follows:

The Company is considering a reorganization of its corporate structure (the "Reorganization") which, in relevant part, is currently as set out in attached Annex 1. It is contemplated that the Reorganization would be effected through the consolidation of certain of the Company's wholly owned corporations and partnerships (collectively, the "Subsidiaries") into a newly formed, wholly owned corporate subsidiary of the Company ("Newco"). No assets or securities of the Company or its subsidiaries will be acquired by any third parties pursuant to the Reorganization.

The Company currently owns, either directly or indirectly, (i) all of the capital stock of each of Corporations A, B and C, (ii) 80% of the capital stock of Corporation D, and (iii) 100% of the partner interests of each of Limited Partnership No. 1 ("LP1"), Limited Partnership No. 2 ("LP2") and General Partnership ("GP"). Specifically, the

1. Corporation A is a direct, wholly owned subsidiary of the Company.

[redacted]

2. The Company owns 100% of the general partner interests, and 76% of the limited partner interests, of LP1. Corporation A owns the remaining 24% of the limited partner interests of LP1.

Corporation D and LP2 owns 56.7% of the common stock of Corporation D.

The Reorganization, as currently contemplated, will involve the following steps:

1. GP will contribute all of its assets and liabilities to Newco.

2. Each of Corporation A, Corporation B, LP1 and LP2 will be merged with and into Newco.

3. Newco will dividend or otherwise transfer the stock representing its 56.7% interest in Corporation D, acquired as a result of Step 2, to the Company.

Annex 2.

of which are owned by the acquiring person prior to such acquisition . . . " Rule 802.30, promulgated under the Act, provides that:

> An acquisition . . . in which, *by reason of holdings of voting securities*, the acquiring person and the acquired person are (or as a result of formation of a wholly owned entity will be) the same person, shall be exempt from the requirements of the [A]ct. (Emphasis added.)

The Company will be both the "acquiring person" and the "acquired person" under Rule 801.2 in connection with each of the consolidation of LP1, LP2 and GP into Newco although only in the case of Corporation A will the Company be the acquired person "by reason of holdings of voting securities." In the case of each of LP1, LP2 and GP (and Corporation B, whose voting securities are held by LP2, and Corporation C, whose

defined by Rule 801.1(b)(1)(i), but because of the Staff's view, set forth at 52 Fed. Reg. 20,058, at 20,062 (1987), that ownership interests in a partnership are not "voting securities" for purposes of the Act, the consolidation of the three partnerships into Newco will not fall

partnerships into Newco may be consummated.

An interpretation of the staff of the Federal Trade Commission (the "Staff") exists, however, that affects such conclusion. Under the Act, the Staff considers an

Company owns, either directly or indirectly, 100% of the partnership interests of LP1, LP2

of the three partnerships into Newco may be viewed as simply the transfer of certain assets owned directly by the Company to a wholly owned corporate subsidiary of the Company. The requirement under Rule 802.30 that the acquiring and acquired persons be the same person "by reason of holdings of voting securities" is never at issue, because under the Wholly Owned Partnership Interpretation, assets of the three partnerships are deemed to be directly owned by the Company and it is uncontroverted that the Act would not apply,

to its wholly owned subsidiary. Accordingly, the requirements of the Act, including the

filing of a Notification and Report Form thereunder would not be applicable to the Reorganization.

Please call the undersigned at [redacted] should the position of the Staff with regard to this issue be different from that set forth above. I appreciate very much your assistance and helpful advice in this matter.

Very truly yours,

[redacted]

JDH:71

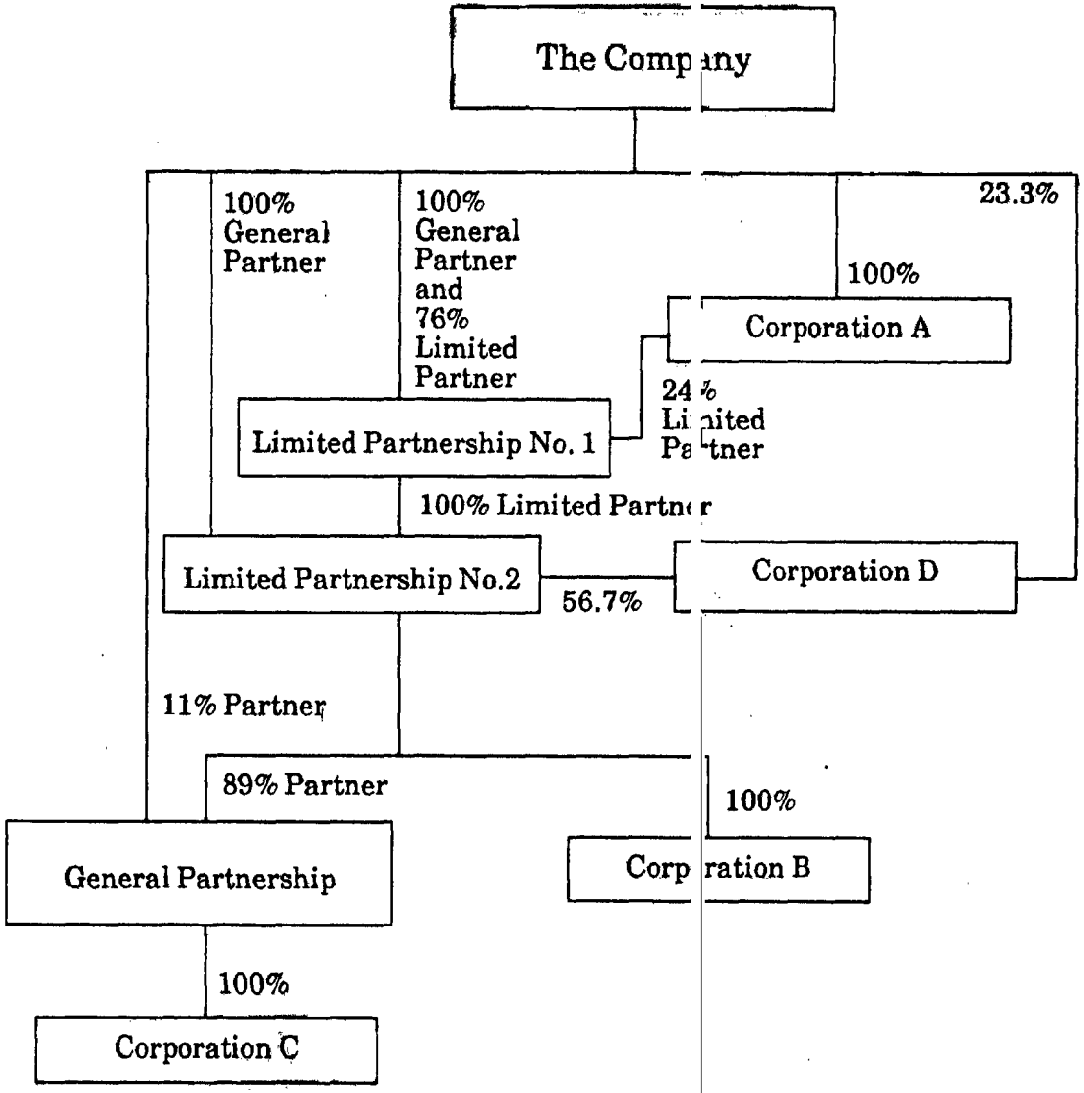
1/28/97 - called [redacted]. He advised that in the [redacted] there are no limited partnership interests. He also advised that the holders of the 20% of Corporation D's voting stock before the Reorganization would be the same holders, with the same [illegible] as before the Reorganization.

He advised that [illegible] 202 30.

[redacted]

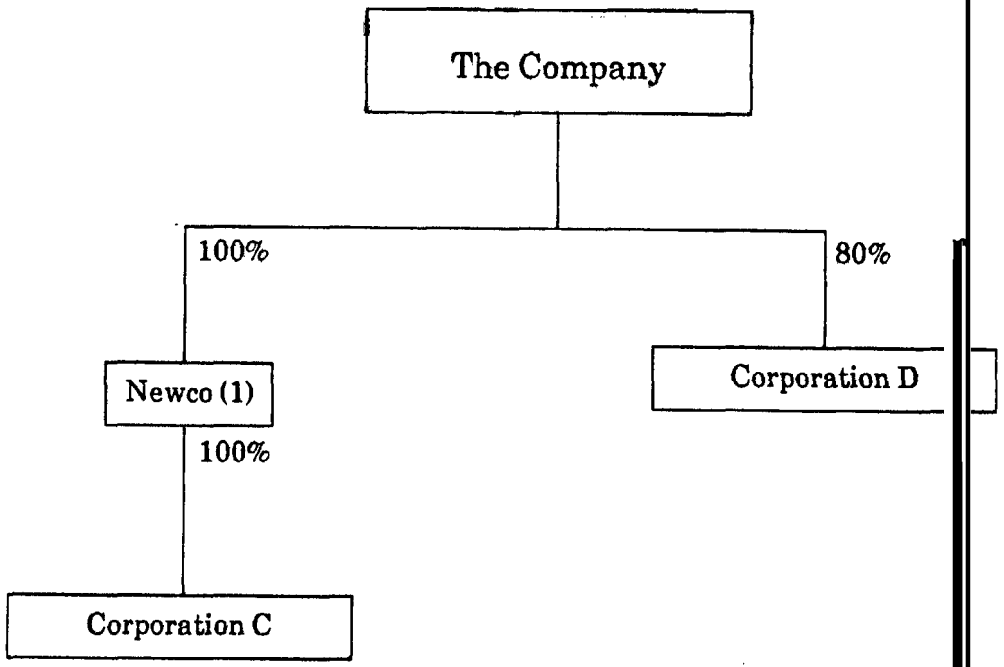
Annex 1

Current Corporate Structure



Annex 2

Post -] organization C[illegible]te Structure



(1) Successor to Limited Partnerships No. 1 and No. 2, General Partnership and Corporations A a[illegible]d B.