

801.11(c); 7A(a)(2)(A)

[REDACTED]

[REDACTED]

[REDACTED]

March 15, 1994

Richard Smith Esq

This material was prepared by the
Department of Justice

ROOM 501
Washington, D.C. 20580

Dear Mr. Smith:

This letter shall confirm our telephone conversation on March 10, 1994, concerning the Federal Trade Commission's interpretation of 16 Code of Federal Regulations § 801.11, with respect to the factual circumstances set forth in this letter.

The question presented is whether, in connection with a statutory merger between two limited partnerships,

net sales. The merger will close on or before March 31, 1994.

Partnership A's fiscal year end is December 31st. Prior to April 30th of each year, Partnership A has its independent auditors prepare audited financial statements.

year ending December 31, 1992 (the "12/31/92 Financial Statements"). The annual net sales of Partnership A set forth in its 12/31/92 Financial Statements are less than \$100 million. Partnership A's independent auditors are currently in the process of auditing Partnership A in connection with the preparation of the audited financial statements of Partnership A for the fiscal year ending December 31, 1993. The audited financial statements for the fiscal year ending December 31, 1993 will not be completed by the auditors until April of this year. However, it is expected that, once issued, Partnership A's

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audited financial statements for the fiscal year ending December 31, 1993 will show annual net sales for Partnership A in excess of \$100 million. Accordingly, the question that arises is whether Partnership A may rely on the 12/31/92 Financial Statements for purposes of establishing that it does not satisfy the \$100 million size-of-person test with respect to its annual net sales

As we discussed in our telephone conversation, Interpretation 144 of the Premerger Notification Manual (1991 Edition) appears to be directly on point. Interpretation 144 states that, even if the entity knows that the forthcoming audited financials will show it to satisfy the size-of-person test based on its most recent fiscal year, it is entitled to rely on the most recent audited financials, so long as they are not more than fifteen (15) months old. Since Partnership A's 12/31/92

merger (if it is consummated on or before March 31, 1994), Partnership A's 12/31/92 financial statements would constitute

annual net sales.

In our telephone conversation, you confirmed to me that the foregoing continues to be the view of the Federal Trade Commission.

Very truly yours,

[Redacted Signature]

2/21/74 - advised writer was my previous partner in [Redacted]

recently passed a partnership merger law which was [Redacted] in cooperation. He said that modifications have yet been submitted to the auditors but, when they are the auditors generally, make changes and adjustments in the figures. Partnership

To meet the size-of-person test.

ADD 20