

Patrick Sharpe, Esquire Premerger Notification Office Federal Trade Commission 6th & Pennsylvania Avenue, N.W. Washington, D.C. 20580

Re: Meaning of "Control" As

Applied to Partnership Entity

Dear Patrick:

This letter memorializes your advice to me in our conversation of yesterday afternoon. I, in essence, described a situation in which Limited Partnership A contemplates acquiring certain assets from an entity meeting the size-of-person test in a transaction meeting the size-of-transaction test under the Hart-Scott-Rodino Act. I sought your assistance in ascertaining whether A might meet the size-of-person test.

The general partner of A is Limited Partnership B; the general partner of B is Corporation C. A had less than \$10 million of revenues and less than \$10 million of assets as shown on its financial statements and balance sheet for its last fiscal year. The only remaining question was whether B, C or any stockholder of C might be deemed an "ultimate parent entity" over A as defined in 16 CFR §801.1(a)(3), which in turn rests on application of the term "control" under 16 CFR §801.1(b).

You advised that "control" of a partnership (an entity of that has no outstanding voting securities, is determined under \$801.1(b)(1)(ii). Under that provision, if neither B nor any other person or entity with an ownership interest in A possesses the right to 50 percent or more of the profits of A or the right in the event of dissolution to 50 percent or more of the assets of A, then there is no "ultimate parent entity" over A for purposes of applying the size-of-person test. Section 801.1(b)(2) (concerning "contractual power" to designate specified individuals) is inapplicable to the control test in a

correct

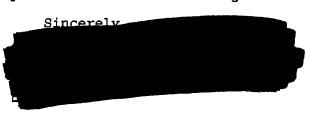


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partnership context, as suggested by example 2 under \$801.1(b) agreed and as interpreted by the Premerger Notification Office.

My thanks to you for your assistance in this regard.





I concer with this letter