

801.90. [redacted], 801.10/11/11

[redacted]

[redacted]

[redacted]

October 20, 1998

Via Facsimile
Richard B. Smith
Premerger Notification Office
Room 303
Federal Trade Commission

Dear Dick:

I am writing to ~~confirm~~ confirm your conclusions regarding the

As you recall, I stated that a newly formed partnership, P, is planning to acquire over \$15 million worth of assets from another entity. P has two partners -- S Corp. with a 99% interest in P, and another new partnership, P1, with a 1% interest in P. P1, however, is entitled to over 50% of the profits and, upon dissolution, assets of P because it has a preferred return due to the fact that it has [redacted] would be the UPE of P.

The partners of P1 include two individuals who each have a 45% interest in P1 and various other individuals who collectively have a 10% interest in P1. The two individuals are collectively contributing over \$19 million to P1 and the remaining partners are collectively contributing \$1000 to P1. Each of the partners [redacted] entitled to 49.99%+ of P1's profits and 49.99%+ of P1's assets upon dissolution. Accordingly, no one would be entitled to at least 50% of P1's profits or assets upon [redacted]

If P1 is its own UPE, there is no Hart-Scott-Rodino filing obligation because the size-of-person test would not be satisfied. P1 is a newly formed entity without regularly prepared financials. A pro forma consolidated balance sheet,

[redacted]

who are contributing the lion's share of the money to P1, these two partners would each be entitled to 50% of P1's profits or assets upon dissolution and would each be P1's UPE. A filing obligation would then arise because the size-of-

I understand that under my hypothetical, the Premerger Notification

contributing the lion's share of the money to P1) solely to ensure that P1 is its own § 801.90 so long as the preferred return is in fact given to all of P1's partners.

for your help.

Enclosures

10/22/96 Writer advises that preferred returns to all partners of P1.

The major contribution... 801.90 (HT. 501.

of the profits or 50% of the assets... P1 is its own UPE and, since not controlled, newly formed and... balance sheet, my use 801.90(e) to... P1 is

its own UPE but the proposed 801.90.

PT Smith