

October 5, 1987

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Federal Trade Commission
Washington, D.C. 20580



Dear John:

I am writing to follow up on our recent phone conversations concerning the effect that the recent amendment to the definition of control has had upon the formation of 50/50 partnerships that are infused with operating assets in amounts that exceed the reporting requirements of Hart-Scott-Rodino. My problem does not involve acquisitions by the partnership. It involves, rather, the issue of whether each of the partners is acquiring the asset contribution of the other.

Under the old definition of control, a 50/50 partnership was a separate person because neither partner met the control test (holding 50% or more of the partnership's voting securities or having the ability to appoint a majority of the partnership's directors). Thus, when each partner contributed its assets to the partnership, those assets were acquired by a separate person, and the transaction was not reportable because the acquiring person invariably failed to meet the statute's size-of-person test prior to receiving its assets from the partners.

The amended definition of control contains a new means by which control may be effected: the right to receive fifty percent or more of an unincorporated entity's profits or of its assets upon dissolution. Thus, the 50/50 partnership is no longer a separate person; it is controlled by each of the partners and is an entity within each of the two persons by which it is controlled.

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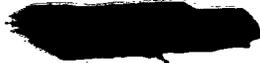
When partner number one (P1) makes its asset contribution to the partnership, those assets are being acquired by partner number two (P2). Similarly, P2's contribution will be acquired by P1. Assuming that all other statutory tests are met, the acquisitions of these asset contributions would seem to be reportable by the partners. I find no exemption in the Act or the Rules that would apply to these stated facts.

Although I agree that this result is a radical departure from prior practice and that it may not have been an intended element of the amendment, the plain language of the Rules compels the conclusion that the formation of a 50/50 partnership would be reportable by each partner as an asset acquisition from the other.

Because I represent a client that is contemplating the formation of a 50/50 joint venture partnership, I would appreciate your written statement of the Commission's enforcement intentions in situations such as this. Please let me know if you need any additional information in order to respond.

Kindest regards.

Sincerely,



The Commission did not change its position regarding the reportability of the formation of partnerships when it adopted the new partnership control rules. When assets are contributed at the time of formation, the asset contribution is not, at that time, separately reportable. The Pro merger office is maintaining this position. However, if the position is changed at will, we don't see such as way that everyone is apprised of the position (through some public release).