

Ferkingstad, James H.

8011Cb(1)(ii)

From: [REDACTED]  
Sent: Tuesday, May 23, 2006 2:28 PM  
To: Ferkingstad, James H.  
Subject: HSR question: investment by existing investor in LLC pursuant to capital not deemed to be an event for which filing is required

VIA ELECTRONIC MAIL

Mr. James Ferkingstad  
Premerger Notification Office  
Bureau of Competition -  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, D.C. 20580

Dear Mr. Ferkingstad:

This message confirms our telephone conversation this afternoon (Tuesday, May 23, 2006) in which you advised that it was the view of the premerger notification staff that the hypothetical transaction described below would not be a transaction with respect to which an HSR filing would be required to be filed.

The hypothetical transaction is described below. Assume that there exists a limited liability company, the LLC membership interest of which is held by several investors (each, a "Member"). No Member is deemed to "control" the LLC within the meaning of 16 CFR 801.1(b) because each Member holds less than 50% of the voting power of the LLC and each Member's proportional right to receive distributions upon the dissolution of the LLC is less than 50%.

The LLC and several of the Members each have annual net sales or total assets in excess of the minimum amounts to satisfy the statutory "size of person" test.

The hypothetical transaction is a "capital call" or similar transaction whereby the Members would make additional capital contributions to the LLC, roughly in proportion to their existing holdings of membership interest. In this capital call, the additional capital contributions by certain Members would be in dollar amounts in excess of the minimum amount to satisfy the statutory "size of transaction" test. It is possible that some Members might invest slightly more or slightly less than their proportionate share, with the result that the proportional share of total membership interest held by all Members would be adjusted as a result of the capital call; however, in no event would the capital call result in any Member holding 50% or more of the voting power of the LLC or of the proportional right to receive distributions upon dissolution.

Thank you very much for the assistance and guidance that you have provided in this matter. I would deeply appreciate it if you would telephone me at [REDACTED] or contact me by email at [REDACTED] to confirm that this message and the conclusions set forth herein correctly stated your advice.



05/23/06 Agrex  
J

[REDACTED]

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