

801.40 (LLC)

June 20, 1995

BY FACSIMILE TRANSMISSION

Richard B. Smith, Esq.  
Senior Attorney  
Premerger Notification Office  
Federal Trade Commission  
601 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Formation of Limited Liability Company

Dear Dick:

I am writing to confirm the telephone conversation we had this afternoon with [REDACTED] in which you agreed with our conclusion that the formation of the limited liability company described below (the "LLC") is not a reportable event under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

As we discussed, the LLC will be organized under the Delaware Limited Liability Company Act (the "Delaware Act"). The LLC will have only two Members, both of which are corporations that will directly own their respective 51% and 49% ownership interests. Consistent with the Delaware Act, the LLC's Limited Liability Company Agreement (the "LLC Agreement") will provide that the management of the LLC will be vested in its Members. The LLC will not be managed by "managers" as defined in the Delaware Act.

Since the Members of the LLC are corporations, they will act and manage the LLC through a Members' Committee. Each Member will appoint three members of the Members' Committee. All persons serving on the Members' Committee will be either a director, officer or employee of the Member appointing him or her.

The Members will exclusively manage the LLC through the Members' Committee. Most matters, including election of officers who will be responsible for conducting the day-to-day operations of the LLC, will require a majority vote

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of the Members' Committee although certain matters will require supermajority (5/6 vote) consent of the Members' Committee.

As you may know, in order for a limited liability company to be taxed as a partnership under the Internal Revenue Code, it must not exhibit at least two of four "corporate" characteristics, including (1) continuity of life, (2) free transferability of interests, (3) centralization of management, and (4) limited liability. Rev. Proc. 95-10. The LLC is intended to qualify as a partnership for federal income tax purposes, and its governance structure is designed to satisfy Internal Revenue Service guidelines relating to absence of centralized management.

Based upon our conversation, I understand the FTC Staff position to be that the formation of the above-described LLC is not a reportable event. It was your view that given the governance structure of the LLC and the fact that each person serving on the Members' Committee will be a director, officer or employee of the Member appointing him or her, the Members will not be acquiring interests that entitle them to vote for individuals exercising similar functions to those exercised by corporate directors and, therefore, will not be acquiring "voting securities" within the meaning of 16 C.F.R. § 801.1(f)(1).

I look forward to receiving confirmation from you at your earliest convenience that the foregoing accurately reflects the Staff's position as to this transaction.

Thank you once again for your assistance in this matter.

Very truly yours,

cc:

6/21/95 - Advised writer that under facts presented here, the LLC formation was not reportable under 801.1(f)(1)  
R.B. Smith