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October 26, 1995

VIA FACSIMILE AND MAIL

By David Rubenstein, Esq.
Federal Trade Commission
Premerger Notification Office
Room 303
Sixth Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Application of Hart-Scott-Rodino
Premerger Notification Requirements to
Formation of a Limited Liability Company

Dear Mr. Rubenstein:

We write to confirm our understanding of the Federal Trade Commission's position concerning the applicability of Hart Scott Rodino premerger notification obligations to the formation of a Limited Liability Company ("LLC") under Delaware law. Our understanding is based on a series of conversations which you and I have had concerning this issue over the last several months.

The basic facts are as follows. Two parties wish to form an LLC under Delaware law in which each party will own a 50% interest. One of the parties is a corporation, which will participate in the LLC through several of its corporate subsidiaries and one of its unincorporated divisions. The other party is an individual. At the time of the LLC's formation, the corporate party, through its unincorporated division and corporate subsidiaries, will contribute cash and intellectual property rights. The individual party will contribute intellectual property rights.

The unincorporated division of the corporate owner will act as the manager of the LLC. In addition, the two owners will create a "Board of Representatives" to make major or strategic decisions for the LLC. The Board of Representatives will consist

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of the individual owner, or employees or directors of a corporate entity which he controls, and employees or directors of the corporate owner, or one or more of its corporate subsidiaries.

Given the above facts, it is likely that a Hart Scott filing would be required if the transaction is viewed as "the formation of a joint venture or other corporation" under §801.40 of the Commission's Hart Scott Rules. However, if the formation of the LLC is treated like the formation of a partnership, no filing would be necessary because the Commission does not view the formation of a partnership as a reportable transaction.

Based on our conversations, we understand that the Commission would not view the above-described LLC formation (and the attendant contribution of assets to the LLC) as a reportable transaction, provided the following conditions were met.

First, if the unincorporated division of the corporate owner, which is to act as manager, is to set policy for the LLC, it must act through an employee of the corporate owner or one of that owner's subsidiaries, affiliates or divisions. If, on the other hand, the manager does not set LLC policy but merely acts like a chief executive or chief operating officer with responsibility for running the LLC's daily operations, it need not act through an employee of the corporate owner or one of its subsidiaries or affiliates. Similarly, persons carrying out the manager's instructions and decisions need not be employees of one of the owners.

Second, the Board of Representatives must consist solely of the individual owner and employees of the corporate owner. No outsiders or LLC employees may sit on the Board. However, if the individual owner controls one or more corporate entities so that they are considered to be part of his "person" under §801.1(a)(1) of the Hart Scott rules, employees of those corporations may sit on the Board of Representatives on the individual owner's behalf without compromising the partnership exemption. This would be the case whether or not the corporate entity controlled by the individual owner owns a portion of the LLC.

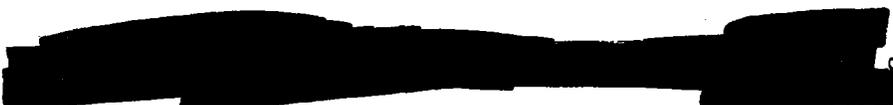
Third, in the event one member of the Board of Representatives is unable to attend a Board meeting, he/she may be represented at the meeting by persons acting pursuant to validly executed powers of attorney. In the case of the corporate owner, persons acting in the place of the corporate Board representatives would also have to be employees of the corporate owner, or one of its subsidiaries, affiliates or divisions.

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Please advise if the foregoing is in any way inconsistent with the Commission's position on the applicability of Hart Scott premerger notification requirements to LLC formations, or, if it is your view that a Hart Scott filing would be required for the transaction we have described.

Thank you for your continuing helpful advice and guidance on this matter.

Very truly yours,

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