

801.40 (LLC FORMATION)

August 5, 1996

Via Overnight Courier

Richard B. Smith, Esq.
Federal Trade Commission,
Premerger Notification Office
Room 303
6th Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

Dear Dick:

Thank you for spending time with me on August 2, 1996 to discuss the premerger reporting requirements for the formation of joint ventures which are organized as Limited Liability Companies ("LLCs").

The hypothetical transaction from which my request for informal advice, see 16 C.F.R. § 803.30, arose is as follows:

Company A and Company B are each for-profit U.S. corporations with over \$100 million in assets and annual revenues. A and B plan on forming a joint venture, JV, which will be organized as an LLC. A and B are each contributing assets valued in excess of \$100 million to JV. A and B will be the only members of JV. JV will be governed by a member committee or its equivalent which will serve a role analogous to a board of directors for a corporation. The member committee will consist of an equal number of representatives appointed by A and B (probably 2 each). The representatives appointed by A will each be current employees, officers or directors of A. Similarly, the representatives appointed by B will each be current employees, officers or directors of B. It is anticipated that JV will have over 100 operational employees shortly after its formation. The majority of such initial employees will be individuals who presently are employed by either A or B.

[Redacted signature area]

✓

[REDACTED]
Richard B. Smith, Esq.
August 5, 1996
Page 2

Based on our conversation, I have concluded that the hypothetical transaction would not be reportable because the JV is not being governed by any individuals who were not directors, officers or employees of the members prior to the transaction.

Please contact me if I am incorrect that this transaction is not reportable, or if additional information is needed before giving advice on whether this transaction would be reportable.

Thank you very much for your time and assistance.

Sincerely,
[REDACTED]

[REDACTED] 8/6/96- Called writer and advised that no report was required for formation of LLC since persons serving on "board" of LLC will be officers, directors or employees of the respective family person. Position of PMA office is that no voting stock is being acquired and, thus, not reportable event is taking place under rule 801.40.
R.B. Smith