

801.40

[REDACTED]

[REDACTED]

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SEP 13 11 42 AM '96

September 13, 1996

**VIA HAND DELIVERY**

Mr. Patrick Sharpe  
Compliance Specialist  
Federal Trade Commission  
Bureau of Competition  
Pre-Merger Notification Office  
Room 301  
6th and Pennsylvania Aves., N.W.  
Washington, D.C. 20580

Dear Patrick:

This letter will confirm that the following transaction will not be reportable under the Hart-Scott-Rodino Antitrust Improvements Act:

Company A and Company B propose forming a joint venture limited liability corporation under Delaware law ("JV"). Company A and Company B are both \$100 million persons for H-S-R purposes. Although the initial capitalization of JV will be below \$15 million, it is contemplated that Company A and Company B will during the first 2 to 3 years of the JV each contribute \$8 million, for a total of \$16 million. Company A will obtain a 51% interest in JV and Company B will obtain the remaining 49%. The managing board of JV will consist of one Company A manager and one Company B manager. There may also be a supervisory board that will consist of 2 to 3 Company A executives and an equal number of Company B executives and a member committee that will consist of one Company A executive and one Company B executive. The JV will lease its workforce from Company A and Company B.

Based on our telephone conversation, it is my understanding that the size-of-parties test and size-of-transaction test will be met

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*agreed*  
by the above-described transaction. Under 16 C.F.R. § 801.40, the size of the parties test is met if JV will have total assets of \$10 million or more, regardless of when the parties actually contribute the assets. However, as we also discussed, the formation of joint ventures is only reportable if the joint venture will operate as a corporation or an entity resembling a corporation in governance and nature. Given the lack of independence of JV, both in terms of management and operations, we agreed that JV more closely resembles a partnership than a corporation, and, therefore, is not within the scope of 16 C.F.R. § 801.40. Moreover, since Company A and Company B will not be obtaining voting securities, but instead membership units in JV, the transaction would not be reportable under 15 U.S.C. § 18a.

\* \* \*

Please let me know as soon as possible if you disagree with the analysis stated for the above described transaction. As always, I appreciate your assistance in this matter. Best regards.

Sincerely,

[Redacted signature block]

*called [Redacted] 9/13/96  
I concur with this letter*

*PS*

[Redacted footer]