

301.40

[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Formation of
a limited
liability
company

September 28, 1998

VIA FACSIMILE

Mr. Patrick Sharpe
Compliance Specialist
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Request For Confirmation of Informal Interpretation

Dear Mr. Sharpe:

I am enclosing a copy of a letter that I sent to you on March 26, 1998 (the "March Letter") requesting confirmation of my understanding that, under the facts described in the March Letter, no member of the limited liability company (the "LLC") described in the March Letter would be deemed to have acquired "voting securities" within the meaning of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules, regulations, statements and interpretations promulgated thereunder (collectively, the "Act"). On April 2, 1998, you confirmed that my understanding was correct

Since the March Letter, the LLC described in the March Letter has been split into two LLCs, one for smaller investors (the "Private LLC") and one for institutional investors (the "Institutional LLC"). The Private LLC will continue to operate as described in the March Letter. The Institutional LLC will operate as described in the March Letter, except that Unaffiliated Board Members will be elected annually by a majority in interest of the Members, and any vacancies among the Unaffiliated Board Members will be filled by a majority in interest of the Members. (As noted in the March Letter, the Unaffiliated Board Members are those members of the Board who are not affiliated with the Advisor, but who may be, but need not be, affiliated with the Members.) As stated in the March Letter, no Member will have in excess of 50 percent of the LLC interests and, accordingly, no Member will have the sole power to elect, appoint or remove a member of the Board.

Now Broken down into
two LLCs. Only cash is
being dumped in.

Mr. Patrick Sharpe
September 28, 1998
Page 2

It is my understanding that under the facts described above, no Member will be acquiring "voting securities" within the meaning of the Act because no Member will have the sole power to appoint a member of the Board.

It would be greatly appreciated if you would call me at your earliest convenience to confirm that my understanding is correct.

Thank you for your prompt attention to this matter.

Sincerely,

[Redacted signature]

Enclosure

cc: [Redacted]

The issue | *no single member can solely appoint a member to the board*
IF members of the management committee are being appointed from within (the membership interest holders) then this is deemed to be more like a partnership.

called [Redacted] 9/29/98
(PS)