F.I. 15

[redacted]

December 13, 2001

BY FACSIMILE

Mr. Michael Verne
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room 314
Washington, D.C. 20580

Re: Advice Received on December 12, 2001

Dear Michael:

I am writing to confirm the advice that I received from you during our discussion on Wednesday, December 12, 2001. To facilitate our discussion, I had faxed to you a chart describing the transaction. A similar, but better organized, chart accompanies this letter and will serve as the basis for the references to the parties within this letter.

Structure of Transaction

As we discussed, at the end of the day the transactions contemplated by my client will result in Investor LLC holding and controlling two previously separate businesses. The three LLCs that will be created to facilitate the transaction are: Investor LLC, K Holdings LLC, and K Acquisition LLC. Initially, Investor LLC will be the sole member of K Holdings LLC, which in turn will be the sole member of K Acquisition LLC. Investor LLC will have six members: JH, F, S1, S2, S3 and S4. While F will retain all "voting" control over investor LLC, you had previously advised me that voting power is irrelevant for determining control of an LLC. F will have a 1% equity interest, S1-S4 will each hold approximately a 24% equity interest, and JH will hold the remaining equity interest (although JH's equity interest will be a "preferred" equity interest). Thus, because no one person or entity has the rights to 50% of Investor LLC's profits upon distribution, or 50% of its assets upon dissolution, Investor LLC will be considered its own ultimate parent entity.

The acquisition of the "S" business will take place by means of a recapitalization. In other words, Investor LLC will make an initial investment in S Corp. for approximately $10 million or less. S Corp will then redeem all of its outstanding shares, except for those held by SH (whose shares are worth approximately $400,000). S Corp. will then redeem SH's interest

for non-voting shares in S Corp., or possibly a membership interest in Investor LLC. Thus, as a result of the recapitalization and redemption of shares, Investor LLC will control S Corp. The value of this acquisition is approximately $20 million, and hence falls below the size-of-transaction test.

Simultaneously, or at least within a couple of weeks of each other, Investor LLC will also acquire the "K" business. K Acquisition LLC will acquire the assets of K Ltd. in return for cash and preferred equity membership interests. This transaction is valued at approximately $71 million, with the cash portion representing approximately $64 million. The cash and membership interests will either be remitted to K Ltd., or directly to K Ltd.'s owners, LM and JC. Of the two, JC owns approximately 95% of K Ltd. Thus, as a result of the acquisition of the K business, JC and LM will hold (either directly or via K Ltd.) membership interests in either K Holdings LLC or Investor LLC.

Analysis

According to Formal Interpretation No. 15:

> The PNO will henceforth treat as reportable the formation of an LLC if (1) two or more pre-existing, separately controlled businesses will be contributed, and (2) at least one of the members will control the LLC (*i.e.*, have an interest entitling it to 50% of the profits of the LLC or 50% of the assets of the LLC upon dissolution).

Because Investor LLC is being formed in order to purchase both K and S, viewing the acquisition of K and S as simultaneous transactions should require the transaction to meet the requirements for reportability of an LLC formation. Thus, while two separately controlled businesses are being contributed to the LLC, none of the members of Investor LLC will control it, thereby failing requirement number two in the formation analysis. *See also* Example 10 to Formal Interpretation No. 15.

If the transactions are viewed separately, my client should still not incur any reporting obligations. The acquisition of S will not be reportable because it fails the size-of-transaction test. The acquisition of K, although meeting the size-of-transaction test, would not be reportable because either K Ltd. or LM and JC will receive an equity membership interest in either K Holdings LLC or Investor LLC. The issuance of such an equity membership interest will require a change in the percentage membership interest of the former members. Pursuant to Formal Interpretation No. 15, "acquisition of additional businesses by existing LLCs . . . that result in a change in the percentage membership interest of any member will be treated by the PNO as the formation of a new LLC under this interpretation." Consequently, the acquisition of K would be analyzed as a formation transaction and would not be reportable because only one business (the K business) is being contributed to the LLC. Finally, although the matter was in some doubt at the time we spoke, I have confirmed that the membership interest that K Ltd. (or

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LM and JC) will receive will be an equity interest, entitling the holder to profits upon distribution and assets upon dissolution.

One final matter. It is possible that my client may wish to add an extra tier on top of Investor LLC, such that Investor LLC's members will be JH and a new LLC ("Newco LLC"). Newco LLC, whose members will be F, S1, S2, S3 and S4, will then control Investor LLC. F would have a 1% equity membership interest in Newco LLC and S1, S2, S3 and S4 will each have an approximately 24.75% equity membership interest. Given the fact that Newco LLC will not be controlled by any of its members, and it is being created as part of the transaction structure described above, there does not appear to be any reason why its addition should change the foregoing analysis. Please let me know if you disagree.

Thank you for your time and patience in helping me resolve the Hart-Scott-Rodino analysis of the above-described transaction. If I have misstated any of the analyses we discussed, or any of the advice I received from you, please call me as soon as possible.

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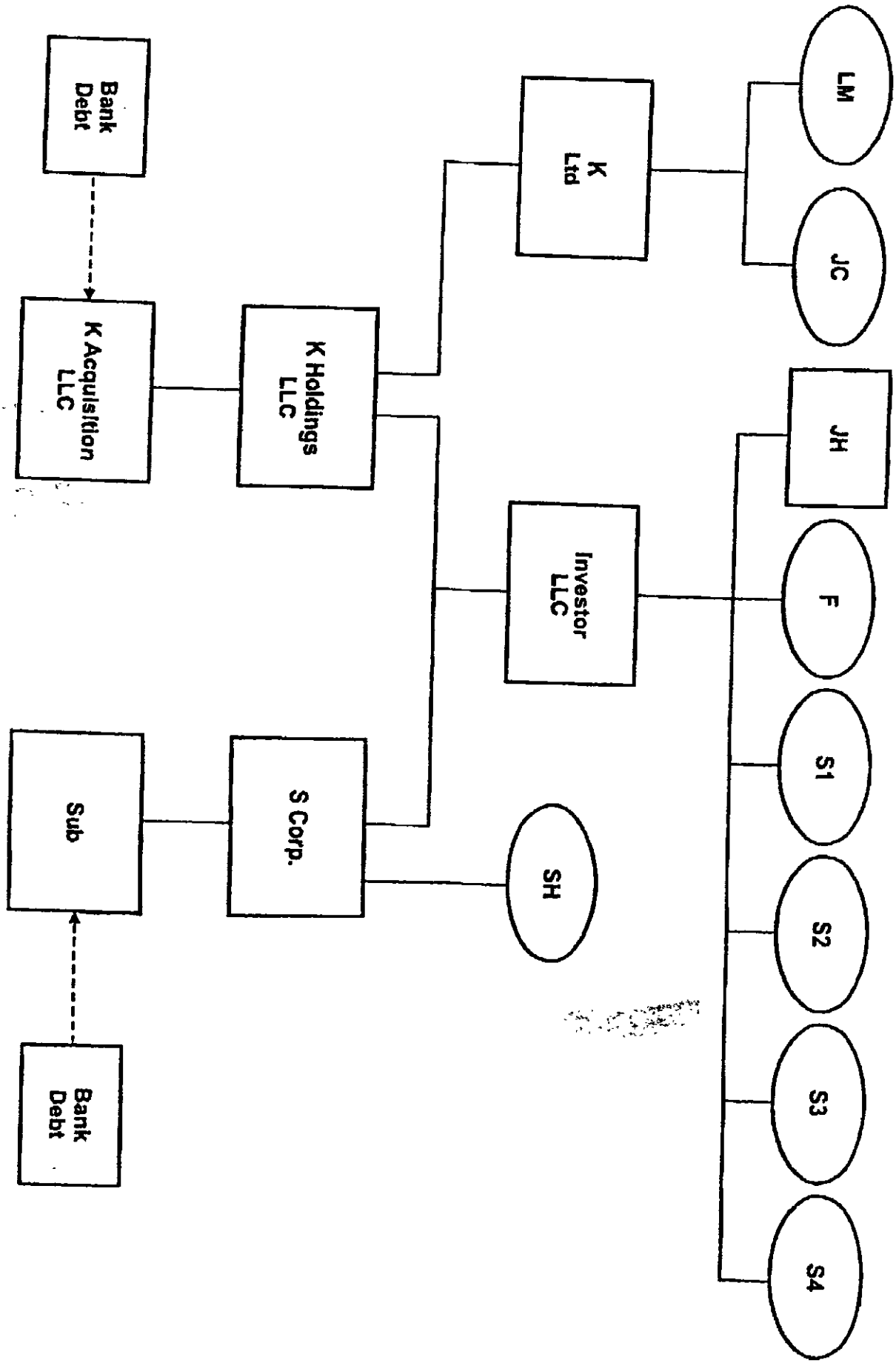
Enclosure

AGREE - THIS DOES NOT CREATE A REPORTING OBLIGATION UNDER FORMAL INTERPRETATION 15 REGARDLESS OF WHETHER THE TWO EVENTS OCCUR SIMULTANEOUSLY OR IN TWO STEPS. N. VERNE (CONCUR)

[signature]
12/15/01


Bank Debt
K Acquisition LLC
K Holdings LLC
K Ltd
LM
JC
JH
F
Investor LLC
S1
S2
S3
S4
Sub
S Corp.
SH
Bank Debt