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**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Tuesday, January 18, 2005 12:40 PM  
**To:** Verne, B. Michael  
**Cc:** [REDACTED]  
**Subject:** HSR Issue Concerning Formation of Foreign LLC (33494-00041)

Dear Mike:

I am writing to confirm our discussions regarding the formation of a new foreign entity, particularly given the imminent changes in the HSR rules and regulations affecting the partnership/LLC arena (the "Proposed Changes").

As we have discussed, two existing foreign persons (the "Parents") will be forming a new entity in the form of a "società per azioni" that is a limited liability company under Italian law ("Italian LLC"). Under Interpretation No. 177 in the Premerger Notification Practice Manual (3d Ed.) recognizes, because foreign LLCs can have significantly different characteristics than US LLCs, the longstanding "voting securities analysis", rather than Formal Interpretation 15, is used to determine whether a foreign LLC should be treated as a partnership or a corporate entity.

Per our discussions, we believe that for HSR purposes Italian LLC would be treated as a partnership under the voting securities analysis set out in Interpretation Number 177. The key factor is that although Italian LLC does have a board or board equivalent, it will be "member managed" -- the Parents will be appointing solely "insiders" (persons who are current officers, directors, or employees of the Parents) to that board/board equivalent.

Because this would thus qualify as a "partnership formation" for HSR purposes, the Parents' contributions to Italian LLC as part of that formation would not constitute reportable acquisitions (pending the Proposed Changes), even if such contributions involve assets or issuers that might otherwise meet the HSR "size of transaction" test, and fall outside the exemptions in 16 C.F.R. §§ 802.50 and 802.51. Moreover, I believe from past discussions that both the formation and contribution elements of the transaction would remain nonreportable (pending the Proposed Changes) even if Italian LLC were created prior to the Parents completing their contributions, so long as the formation and contributions were contemplated by the Parents to be part of the same overall transaction. Indeed, this is the case here -- Italian LLC will be created by one of the Parents as a shell a number of weeks prior to the Parents making their contribution -- but because this is all contemplated by the Parents as part of the same transaction, I would expect that this timing lag would not affect the overall conclusion that the contribution is considered part of the formation.

As we have also discussed, the parties recognize that the transaction will almost certainly be reportable once the Proposed Changes are implemented. However, I understand that if the transaction is consummated even one day prior to the effective date of the Proposed Changes -- which would obviously also be after the effective date has been announced -- it will be judged under the current rules, and not subject to any second guessing under the Proposed Changes.

Please advise if you disagree with any of the foregoing, and as always thanks for your attention to this.

Sincerely,

[REDACTED]

AGREE -  
*Bruno*  
1/18/05