[redacted]

May 12, 1995

VIA FEDERAL EXPRESS

Thomas F. Hancock, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
7th Street and Pennsylvania Avenue
Room No. 303
Washington, D.C. 20580

Dear Mr. Hancock:

On the assumed facts below, I am writing to confirm that a Hart-Scott-Rodino filing is not required for the formation of a certain joint venture entity as described herein. My partner, [redacted] spoke to you by telephone on April 26 and 27, 1995, and discussed the transaction. Also [redacted] of [redacted] talked with you on May 11, 1995 about the same transaction. The parties forming this joint venture desire to comply with all applicable laws, including the Hart-Scott-Rodino Antitrust Improvements Act (the "Act").

We understand that a joint venture using a corporate form, which otherwise satisfies the size thresholds, is required to file under 16 C.F.R. § 810.40. We also understand that the formation of a joint venture using a partnership structure is exempt for the notification requirements, regardless of the size of the transaction. *See, e.g.*, A.B.A. Premerger Notification Practice Manual, Interpretation 195.

Our client proposes to enter into a joint venture using a limited liability company. The limited liability company vehicle has recently been authorized under the laws of most states. Limited liability companies are taxed as partnerships and reflect most of the other attributes of a partnership, but the owners enjoy limited liability similar to a corporation.

We believe that the characteristics of this proposed joint venture more closely resemble a partnership, and therefore, unless advised otherwise, we will not to file a notification under the Act. The relevant facts are as follows:

1. Two domestic corporations, each of which has a different "ultimate parent entity" (as defined in 16 C.F.R. 801.1(a)(3)), will create a joint venture by contributing cash and assets to the new entity. The new entity (the "LLC") will be organized pursuant to the [redacted] limited liability company statute, [redacted]

2. One contributor, Member A, is transferring an operating business to the LLC, valued by the parties for purposes of the Transaction at $38.5 Million.

3. The other contributor, Member B, is contributing $15 Million in cash to the LLC and paying $5 Million directly to Member A. Member B has total assets of more than $100 Million.

4. Member A and Member B each own 50% of the issued and outstanding shares of capital stock of a corporation (the "Subsidiary"). The Subsidiary was formed in [redacted] by Member A and Member B as a joint venture. The FTC determined that formation of the Subsidiary was exempt from the notification requirements under the Act because the minimum dollar thresholds under 16 C.F.R. § 802.20 were not met. Member A and Member B are contributing all the stock of the Subsidiary to the LLC. The current fair market value of each contributor's interest in the Subsidiary has not yet been determined for purposes of the Transaction.

5. The management and operations of the LLC will be in accordance with an Operating Agreement. Under the Operating Agreement, the LLC will be managed by five Managers. Member A appoints two Managers and Member B appoints three. Managers will be officers, employees and agents of Member A and Member B. They will not be employees of the LLC. For significant management decisions, the approval of four Managers is required. Other major decisions are reserved to the Members, and both must approve such decisions.

6. Profits and losses will be allocated equally between the Members. Cash will be distributed equally to the extent needed to pay federal and state income taxes on the LLC's income. Next, cash will be distributed only to Member A until the capital accounts are equal. Further cash distributions will be equal. On dissolution, distributions will first be in

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accordance with capital accounts, then, after capital accounts are paid, any further distributions will be equal.

7. The LLC has a limited existence. Its Articles of Organization provide that it will terminate in [redacted]

8. The Members' interests in the LLC are not freely transferable. If the other Member does not consent to a transfer, the successor to the transferred interest has only financial rights and no governance rights with respect to the LLC interest. However, after 10 years (or earlier at the death of the principal shareholder of Member A), the parties will have options to acquire or sell Member A's interest at market value.

Based on the foregoing, it is our conclusion that a notification filing under the Act is not required because the Transaction is the formation of a joint venture using other than a corporate structure. If you agree that under these facts the Transaction is not reportable, we would appreciate receiving written confirmation from you.

Thank you for your assistance.

Very truly yours,

[redacted]

[redacted]

5/19/[illegible]
Called the writer to say that I agree with his analysis with two exceptions
— an LLC is considered analogous to partnerships if one or more members manage it through their directors, officers, or employees. We have not taken a position on agents of the member.
— Facts like that the LLC is not of perpetual duration or that the members' interests are not freely transferable are irrelevant from our point of view.

[redacted] TFH