

[REDACTED]

[REDACTED]

[REDACTED]

June 25, 1996

Hy David Rubenstein, Esq.
Premerger Notification Office
Bureau of Compliance
Room 303
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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PREM...

RE: Premerger Notification Analysis for
Limited Liability Companies

and

[REDACTED]
No. [REDACTED]

Dear Mr. Rubenstein:

This letter is to confirm the telephone conversation of June 18, 1996, in which you, [REDACTED] and I discussed the formation of a Delaware limited liability company ("LLC"), and a Canadian limited partnership (LLP).^{*} It is our understanding, based on the facts as discussed below, that the formations of these two entities will not be a reportable transaction under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 as amended (the "Act") and the rules promulgated thereunder.

For purposes of this letter, it is assumed that the size-of-the-person and the size of the transaction thresholds would be met if the formation of the LLC and the LLP were deemed to result in the acquisition of "voting securities." It is our understanding, however, that the staff's position has long been that the formation

^{*} As a part of the entire transaction under the Letter of Intent filed as part of the report in the asset portion of this matter, the parties also contemplate the formation of an Alberta limited partnership. That limited partnership would involve a General Partner, to be a Canadian corporation with assets of less than \$10 million under the terms of a Shareholder Agreement between [REDACTED] and [REDACTED], as Limited Partners. The general partner will function exclusively as a Canadian General Partner of the LLP and will itself have no U.S. assets or sales in or into the United States.

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of a partnership is not a reportable event. Therefore, the creation of the LLP would not trigger the need for a filing. In addition, it is our understanding that under the current staff interpretation of Rule 801.1(f)(1), if ownership of limited liability company interests does not entitle the members to vote for individuals functioning similarly to corporate directors, those ownership interests will not be characterized as voting securities and thus the formation of such an entity is not a reportable event under the Act.

The LLC is proposed to be formed as a Delaware limited liability company involving [redacted] the "Members." Members will act through the use of representatives in a "committee of the whole" or Management Committee. [redacted] entitled to appoint three of its officers, employees or agents to the Management Committee as its "Representatives," and [redacted] entitled to appoint two officers, employees or agents as its Representatives. Certain actions of the LLC are deemed "material actions" and require unanimous approval of the Management Committee, and other actions not deemed "material actions" require a majority vote of the Management Committee.

agents must be employees

[redacted] will serve as the Managing Member of the LLC. The Managing Member's role will not be similar to that of a corporate board of directors, which is typically granted broad powers. In the LLC the authority of the Managing Member is narrowly described to involve the "day to day" operation of the LLC.

Based on the foregoing facts, it is our understanding that the staff of the Premerger Office is of the view that the formation of the LLC and Canadian LLP will not be subject to the premerger reporting requirements of the Act. If any additional or changed information is needed, or if our understanding regarding the applicability of the exception is incorrect, please advise me by letter or by telephone at [redacted] facsimile at [redacted]

With best regards,

[redacted signature block]