

801.40 (LLC formation)

[REDACTED]

August 29, 1996

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SECURITY TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

BY HAND

Richard B. Smith, Esq.
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
Sixth Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Mr. Smith:

This letter memorializes the advice you provided to [REDACTED] and myself over the telephone on August 29 concerning the appropriate analysis under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the implementing regulations, of the following transaction.

1. Persons X, Y, and Z intend to form four LLCs as part of a venture to operate certain existing assets and engage in new construction activities. The ownership interests in LLC 1 and LLC 2 will be divided among X, Y, and Z on approximately a 50/25/25 basis. LLC 1 and LLC 2 will serve as holding companies, holding the interests of LLC 3 and LLC 4: LLC 1 will hold 99% of each of LLC 3 and LLC 4, and LLC 2 will hold the other 1% of each of LLC 3 and LLC 4. As part of the formation transactions X, Y, and Z will contribute to LLC 1 assets, cash, and commitments to make future cash contributions to fund construction activities; LLC 1 will then immediately convey the assets, cash, and the cash commitments to LLCs 3 and 4. All LLCs to be formed will be managed solely by representatives of X, Y, and Z; no persons comparable to outside directors of a corporation will be participating.

2. In order for the LLCs to operate, it is necessary that certain environmental and other regulatory approvals and permitting, and real estate easements, first be secured. The parties therefore currently contemplate that the activities to obtain such rights be commenced before the cash and assets are contributed. To facilitate this process, the parties currently plan initially to create LLCs 3 and 4 as 50/25/25 "shell" entities that will file the applications and secure the easements, with any cash funding for such activities provided by X, Y, and Z as needed.

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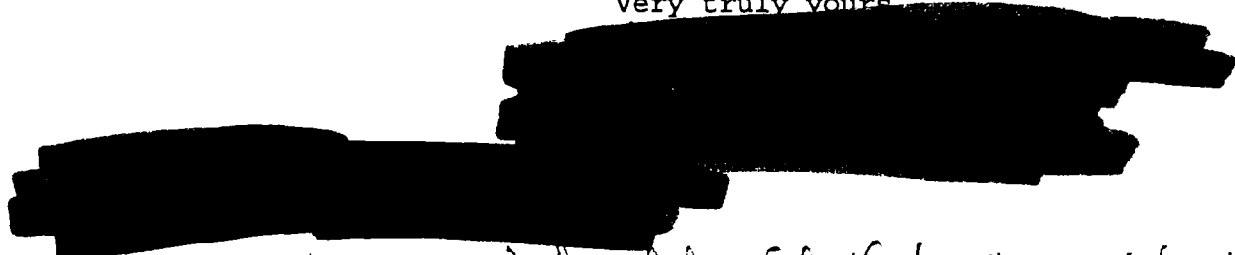
Within approximately two months thereafter, the assets, cash, and cash commitments will be contributed and the four-LLC structure detailed in paragraph 1 above will be established (including the realignment of the ownership structures of LLC 3 and LLC 4). All of these transactions will be set out and agreed to by X, Y, and Z in the contracts by which they agree to form the LLCs.

You advised that the transaction outlined above in paragraphs 1 and 2 consists of exempt LLC formations, because the LLCs will be exclusively governed by representatives of X, Y, and Z. You advised that the fact that LLCs 3 and 4 will be created as shell entities that will engage in certain preliminary, limited activities prior to the establishment of the four-LLC structure does not change this conclusion, because their creation is intended as an integral part of the overall exempt transaction of forming the LLCs, and will be reflected in the formation documents. Thus, you advised that no Hart-Scott-Rodino filing would be required.

If this letter does not accurately reflect the advice you provided concerning the nonreportability of the transaction described above, please call me as soon as possible.

Thank you for your time and assistance.

Very truly yours



8/30/96 Writer states that the term "representatives" of X, Y and Z means officers, directors or employees of these three persons. I agreed with conclusion that this is the "formation" of non-reportable LLCs.

R B Smith