SEP 28 '98 16:29 [redacted]

Attachment to letter dated 9/28/98

30140

[redacted]

[redacted]

This is a duplicate letter already filed.
(PS)

March 26, 1998

VIA FACSIMILE

Mr. Patrick Sharpe
Compliance Specialist
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th Street and Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: Request For Informal Interpretation

Dear Mr. Sharpe:

I am writing to request confirmation of my understanding that, under the facts described below, no member of the limited liability company described below will be deemed to have acquired "voting securities" within the meaning of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules, regulations, statements and interpretations promulgated thereunder (collectively, the "Act").

I. Background

A. Limited Liability Company

A limited liability company (the "LLC") will be formed by an investment advisor (the "Advisor"). The purpose of the LLC will be to invest the funds of investors that become members of, and make capital contributions to, the LLC (the "Members").

B. Board of Managers

1. Generally. The LLC will be governed by a Board of Managers consisting of 5 to 7 individuals (the "Board"). One of the members of the Board will be affiliated with the Advisor (the

"Affiliated Board Member") The remaining members of the Board (the "Unaffiliated Board Members") may, but need not, be affiliated with the Members.

2. **The Initial Board**. The initial members of the Board will include a representative of the Advisor and at least four other individuals recruited by the Advisor. These individuals may include persons affiliated with certain of the larger investors (if such investors wish to have a representative serve on the Board) or independent third parties. The initial members of the Board will be named in an amended and restated limited liability company agreement (the "Amended Agreement") and will become members of the Board at the initial closing when investors sign the Amended Agreement. Each member of the Board will remain in office until he or she resigns or is removed from the Board.

3. **Removal and Replacement of Members of the Board**. The method of removal and replacement of members of the Board varies depending upon whether the member is the Affiliated Board Member or an Unaffiliated Board Member. The Board may remove any member of the Board for cause. The Affiliated Board Member may be removed and replaced by the Advisor at any time with or without cause and without the approval of the Unaffiliated Board Members or the Members. Each Unaffiliated Board Member may be removed with or without cause by a majority in interest of the Members. A new Unaffiliated Board Member may be appointed by a majority of the Unaffiliated Board Members then in office or, if no Unaffiliated Board Members remain in office, then by a majority in interest of the Members. No Member will have in excess of 50 percent of the LLC interests and, accordingly, no Member will have the sole power to appoint an Unaffiliated Board Member.

4. **Powers of the Board**. The Board will delegate certain powers and retain others. The Board will delegate discretionary investment advisory authority to the Advisor. The Board will retain authority over the following matters, among others: (1) monitoring the Advisor's performance of its investment management and other delegated responsibilities; (2) reviewing and approving or disapproving any proposed transaction between the Advisor or its affiliates and the LLC; (3) removing the Advisor (subject to approval of at least a majority in interest of the Members if for cause and two-thirds of the Members if without cause); and (4) engaging a new advisor if the Advisor resigns or is removed (subject to approval of at least a majority in interest of the Members).

C. The Advisor

The Advisor will make no contribution to the LLC and will have no economic interest in the LLC, other than the right to receive a management fee and, in certain cases, an incentive fee.

[redacted]

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II. Conclusion

It is my understanding that under the facts described above, no Member will be acquiring "voting securities" within the meaning of the Act because no Member will have the sole power to appoint a member of the Board. Furthermore, it is my understanding that if a Member did have the sole power to appoint a member of the Board, then such Member would only be deemed to have acquired "voting securities" within the meaning of the Act if such Member intended to appoint a person other than an officer, director or employee of an entity within the "person" of such Member.

I concurred as of 7/26/99 However,

It would be greatly appreciated if you would call me at your earliest convenience to confirm that my understanding is correct.

Thank you for your prompt attention to this matter.

Sincerely,

[redacted]

cc: [redacted]

we now say it is a V/S if the management board members are coming from outside the mebership interestholders. If coming from inside then it is more like a partnership

Called [redacted]
9/29/98