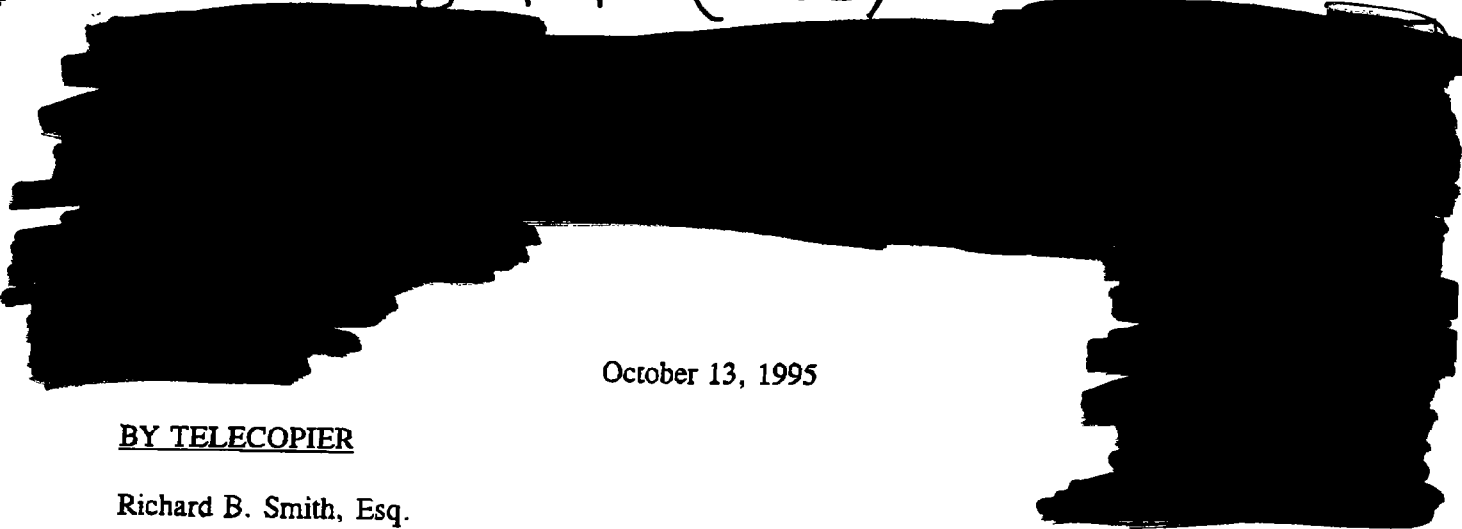


801.40 (LLC)



October 13, 1995

BY TELECOPIER

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HSR Reportability of the
Formation of Limited Liability Companies

Dear Dick:

I am writing to confirm the advice that was given to me in our
conversations of yesterday and today regarding under what circumstances the formation of a
Limited Liability Company ("LLC") and the acquisition of membership interests therein by

You informed me that the reportability of the formation of an LLC involves a
fact-specific inquiry that is based on the definition of "voting securities" set forth in
Section 801.1(f)(1) of the Rules implementing the HSR Act.¹ You also stated that, in
determining whether LLC formation is reportable, the Staff would examine whether the
contributors to a newly formed LLC are in fact voting securities.

¹ Section 801.1(f)(1) defines voting securities as "any securities which represent
or upon conversion entitle the owner or holder thereof to vote for the election of directors
... or, with respect to unincorporated entities, individuals exercising similar functions."
16 C.F.R. § 801.1(f)(1).

[Redacted]

Richard B. Smith, Esq.

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With respect to the second prong, you stated that if at the time of formation the LLC interest holder *itself* served on the board equivalent (rather than electing or appointing a third party), the LLC interest would not be a "voting security." After formation, subsequent appointment of a third party to represent the LLC interest holder would *not* convert that interest into a voting security for purposes of determining whether the formation of the LLC is reportable.² Where the holder of the LLC interest is a corporation, having one or more director, officer or employee of that corporation serve on the board

where the corporation elected or appointed a third party at the time of formation to represent its LLC interest, the interest *might* be viewed as a voting security. In such a case, you stated

LLC's day-to-day operations) the corporation's LLC interest *would* be viewed as a voting

unrelated third party who had no officer or employee role in the LLC's operations, the LLC interest *would* be viewed by the Staff as a voting security.

If this letter fails to accurately reflect the views of the Premerger Notification Office as to the issues set forth, please notify me immediately.

Thank you for your helpful advice regarding this matter.

Very truly yours

[Redacted signature]

[Redacted]

[Redacted]

10/13/95 - Advised writer's phone mail H & J. When was correct in its statement of how the

² However, the LLC interest then may be viewed as a voting security for purposes of determining whether a subsequent transfer of the interest would be reportable.

RBS:mkh