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October 18, 1995

BY TELECOPIER

Hy David Rubenstein, Esq.
Federal Trade Commission
Premerger Notification Office
Room 303
Sixth Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Application of Hart-Scott-Rodino
Premerger Notification Requirements to

Dear Hy:

Per our conversation of earlier today, I am faxing
herewith a draft letter to you confirming our understanding of

discussions concerning the Commission's position, please let me
know and I will send the letter to you in final form. If the

As always, thanks for your help and guidance.

Very truly yours,

[REDACTED]

[REDACTED]
enclosure

This material may be subject to the
confidentiality provisions of Section
7A(h) of the Clayton Act which may affect
release under the Freedom of Information
Act.

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[R&C DRAFT 10/18/95]

October 18, 1995

VIA FACSIMILE AND MAIL

Hy David Rubenstein, Esq.
Federal Trade Commission
Premerger Notification Office
Room 303
Sixth St. and Pennsylvania Avenue, N.W.
Washington DC 20580

Re: Application of Hart-Scott-Rodino
Premerger Notification Requirements to
Formation of a Limited Liability Company

Dear Mr. Rubenstein:

We write to confirm our understanding of the Federal Trade Commission's position concerning the applicability of Hart Scott Rodino premerger notification obligations to the formation of a Limited Liability Company ("LLC") under Delaware law. Our

The basic facts are as follows. Two parties wish to form an

participate in the LLC through several of its corporate subsidiaries and one of its unincorporated divisions. The other

corporate subsidiaries, will contribute cash and intellectual property rights. The individual party will contribute intellectual property rights.

The unincorporated division of the corporate owner will act as the manager of the LLC. In addition, the two owners will create a "Board of Representatives" to make major or strategic

Mr. David Rubenstein Esq.

decisions for the LLC. The Board of Representatives will consist of the individual owner, or officers or directors of a corporate entity which he controls, and officers or directors of the corporate owner, or one or more of its corporate subsidiaries.

Given the above facts, it is likely that a Hart Scott filing would be required if the transaction is viewed as "the formation of a joint venture or other corporation" under §801.40 of the Commission's Hart Scott Rules. However, if the formation of the LLC is treated like the formation of a partnership, no filing would be necessary because the Commission does not view the formation of a partnership as a reportable transaction.

Based on our conversations, we understand that the Commission would not view the above described LLC formation as

First, if the unincorporated division of the corporate owner, which is to act as manager, is to set policy for the LLC, it must act through an officer or director of the corporate owner divisions. If, on the other hand, the manager does not set LLC policy but merely acts like a chief executive or chief operating officer with responsibility for running the LLC's daily operations, it need not act through an officer or director of the corporate owner or one of its subsidiaries or affiliates. Similarly, persons carrying out the manager's instructions and

Second, the Board of Representatives must consist solely of

entities so that they are considered to be part of his "person" under §801.1(a)(1) of the Hart Scott rules. officers or directors

partnership exemption. This would be the case whether or not the

Third, in the event one member of the Board of Representatives is unable to attend a Board meeting, he/she may

corporate owner, persons acting in the place of the corporate Board representatives, would also have to be officers or directors of the corporate owner or one of its subsidiaries or

By David Rubenstein, Esq.
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affiliates.

Please advise if the foregoing is in any way inconsistent with the Commission's position on the applicability of Hart Scott
merger notification requirements to the formation of, or if it
is your view that a Hart Scott filing would be required for the
transaction we have described

Thank you for your continuing helpful advice and guidance on
this matter.

Very truly yours,

[Redacted signature]

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directors but can include employees of
either side.