801.40 [LLC Formation]

[redacted]

AUG 8 10 55 AM '96

August 7, 1996

VIA UPS OVERNIGHT

Richard Smith, Esq.
Premerger Notification Office
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Smith:

This firm represents Th[redacted] headquartered in [redacted] intend to form a venture to develop and market certain new technology involving [redacted] of stored value utilizing computerized [redacted] The venture activities will be conducted through a new limited liability company ("LLC") to be formed by the three venturers as the members of the company. The parties have agreed to form the LLC and ... subject, however, to the prior approval by the Office of [illegible] Comptroller of the Currency. The question was raised as to whether a Hart-Scott-Rodino Premerger Notification Report would be required.

After informal discussions on the telephone with you and also with Mr. Victor Cohen of the Premerger Notification Office, the conclusion was that a Premerger Notification Report [illegible] in which the LLC is governed. Currently, the Federal Trade Commission ("FTC") views the formation of an LLC like the formation of a partnership, provided that all of the members of the board of managers are officers, employees or directors of the parties forming the joint venture. In such case, the LLC functions like a partnership, and the formation of the LLC like that of a [illegible] [redacted] we discussed, the governing body of the LLC to be formed by the three members in the situation in question will differ slightly in that each of the members will appoint two managers and one of

[redacted]

the three members will appoint a manager who is <u>not</u> an officer, director, or employee of such member, but rather is a former employee who will act as a paid agent for the particular member.

On Thursday, June 27, 1996, during our telephone conversation, you indicated that under these specific circumstances, Premerger Notification would still not be necessary. If only one of the three members appoints such an outside manager, an HSR filing would not be required under the facts as I explained them. The reason is that although the member who appointed the outside manager would be deemed to have acquired voting securities for purposes of the statute (as if the LLC were being governed like a corporation rather than a partnership), because only one member would be acquiring such voting securities, that one member would be acquiring 100% of the outstanding voting securities of the LLC. The acquisition of 100% of the voting securities of a corporation at the time of formation of a corporation does not require HSR notification. Thus, under that scenario where one member only appoints a manager who is not an employee, officer, or director, no HSR filing would be required by any of the members of the joint venture [illegible]

The purpose of this letter is to confirm generally that the above description of the current F.T.C. position with respect to reporting requirements for the formation of a limited liability company is correct.

I would appreciate [illegible] informing me if it is [illegible]. Thank [illegible]

Very truly yours,

[redacted]

[redacted] [illegible] that since only one [illegible]

[illegible] LLC noted above, no report was required under [illegible] HSR rules.

R B Smith

[redacted]