801.40 (LLC formation)

[redacted]

August 29, 1996

BY HAND

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

Dear Dick:

This letter memorializes the advice you provided over the telephone on August 28 concerning the appropriate analysis under [redacted]

> [redacted] will contribute assets or cash in return for a 50% LLC ownership interest. Certain of the [redacted] consents are received and other title encumbrances are resolved, a process that may take several months to complete. The LLC will be managed by a board whose members will solely consist of employees or officers of A and B respectively.

You advised that this transaction constitutes an exempt LLC formation transaction, because the LLC will be exclusively governed by a board consisting of representatives of A and B, with no members who are not officers or employees of A or B. You further advised that the exempt character of the transaction is not affected by the fact that certain assets will not be contributed until several months after the LLC is actually created. You analogized to the example following 16 C.F.R. § 801.40, and indicated that because the assets are intended and agreed to be contributed in connection with the LLC's formation,

[redacted]

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their transfer even after the creation of the LLC would be deemed part of the LLC formation transaction. Thus, you advised that no

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,

[redacted]

8/30/96 - Left phone mail message with writer that I agreed with her conclusion that formation of LLC was on a continuum and that its final (and later stage including [illegible]) formation was non reportable.

RBSmith