

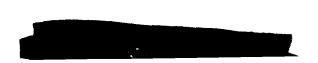
Re: HSR Reportability of Limited Liability Company Formation

Dear Dick:

I am writing to confirm the understanding I gained from our telephone conversation of the morning of Friday, September 13. The conversation concerned the circumstances under which the formation of a limited liability company ("LLC") is reportable under the Hart-Scott-Rodino Antitrust Improvements Act (the "HSR Act" or "the Act") and encompassed a number of letters addressed to you on that subject. I also want to present to you my understanding of another I ISR letter which we did not discuss.

Our September 19 conversation instruded the following securities as the standard of the standa

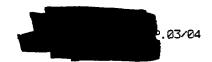
315 U.S.C. § 18a(b)(3)(A).



¹These other requirements are the Commerce Test of 16 C.F.R. §801.40(d), the Size of Person Test of 16 C.F.R.§801.40(b)(1)-(2), and the Size of Transaction Test found at 15 U.S.C.§18a(a)(3).

²15 U.S.C.§ 18a(a). <u>See also</u> 16 C.F.R.§ 801.40(b).





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unincorporated. Thus, whether the formation of an LLC is a reportable event depends on whether the LLC members receive interests entitling the members to vote for or otherwise select a decision-making body that is functionally equivalent to a board of directors.

2. When a proposed transaction involves an LLC and the LLC contains a

of the persons who serve on that putative board equivalent. If all those persons will necessarily be:

a. members of the LLC, or

b. in the case of an LLC member that is an organization, directors, officers, or employees of the organization serving on the putative board continuent as representatives of the organization.



and superintending overall operations. Indining an LLO 8 day-to-day operations does not involve board-equivalent functions.

4. Voting securities are involved only if the putative board equivalent includes "outsiders" and performs board equivalent functions. As a result, and because your office looks first at the "outsider" issue, your office reaches the second step of the analysis only when a putative board equivalent exists and "outsiders" are to be present on the board equivalent.

5<u>A Japtor addressed towns</u> dated November 20, 1995, involved an LL C with an

corporate LLC members. The advisory board also had the power to remove the LLC's CEO. The handwritten comments on the letter indicate that the advisory board was not deemed to be a board equivalent at least in part because it lacked the exclusive power to remove the CEO, a power a corporate board usually does