

FAX COVER LETTER

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801.40  
801.116

Formation of  
LLC / like  
Partnership

WHYER'S DIRECT DIAL NUMBER

March 24, 1998

John Patrick Sharpe  
Premerger Notification Office

Sixth & Pennsylvania Avenue, N.W.  
Room 303  
Washington, DC 20580

Re: Premerger Notification Requirements Under the Hart-Scott-Rodino Antitrust  
Improvements Act of 1976, as amended (the "Act")

Dear Mr. Sharpe:

I am writing to you to confirm our view that a Notification and Report Form is not  
required to be filed in connection with any of the transactions described below. Where

Formation of New LLC (Exhibit A)

*No filing was required for its  
formation*

Three individuals who are interest holders in XYZ LLC have formed XYZ Inc. in  
connection of the transactions described below. XYZ Inc. is a corporation. The  
balance sheet prior to the consummation of the Target Acquisition.

*in 801.40 analysis.*

insiders. New LLC will be capitalized with \$150,000 by XYZ Inc. In addition, XYZ LLC will

[Redacted]

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~~LLC will borrow \$134.3 million from a syndicate of institutional lenders.~~

~~Analysis. None of the steps taken in connection with the formation and capitalization of New LLC will result in the New LLC being treated as a partnership for federal income tax purposes. Therefore, no partnership has been formed. Furthermore, the terms of its operating agreement. New LLC should be regarded as a partnership and not a corporation.~~

**Acquisition of Target (Exhibit B)**

New LLC will loan \$200.5 million (all of which has been contributed as described above) to XYZ Inc. XYZ Inc., in turn, will purchase all of the outstanding capital stock of Target Inc. from Seller in consideration for \$200.5 million in cash and the issuance of a promissory note in the amount of \$53.4 million to Seller.

Analysis. XYZ Inc. has no regularly prepared balance sheet and less than \$10 million in total assets, excluding the proceeds of the loan from New LLC.

~~The structure described here is not a partnership.~~

At this point, both Target Inc. and New LLC are wholly-owned by XYZ Inc. XYZ Inc. intends next to merge these two wholly-owned entities by contributing 100% of the capital stock of Target Inc. to New LLC in exchange for (a) the payment of the \$53.4 million note to Seller and (b) the contribution of the \$200.5 million note from XYZ Inc. to New LLC. Target Inc. would then be merged into New LLC with New LLC surviving the merger. Following the merger, New LLC will pay the \$53.4 million note to Seller using cash held by Target Inc. prior to such merger.

intraperson exemption to apply to circumstances in which the acquired and acquiring person are deemed to be the same person as a result of 100% ownership interest in a limited liability company. Thus, since both Target Inc. and New LLC are deemed to be the same person as a result of XYZ Inc.'s 100% ownership interest in both entities, the foregoing transactions are exempt from filing.

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**Conversion of Convertible Notes (Exhibit D)**

The convertible notes of New LLC held by XYZ LLC and the other investors then would be converted into interests in New LLC. After giving effect to such conversion, the ownership

XYZ LLC	80.9
Other Investors	19.0

interests would not constitute voting securities. Therefore, the conversion of the notes into New LLC interests would not be reportable. Furthermore, no person will be deemed to acquire the underlying assets of New LLC since no person will hold 100% of the New LLC interests.

interest in XYZ LLC. This interest will be a new series (Series F) that will convey to XYZ Inc. the right to designate a manager to manage the operations of New LLC on behalf of XYZ LLC.

A through E interests in XYZ LLC. Each series conveys to its holders the right to designate a manager of XYZ LLC who is delegated authority under the XYZ LLC operating agreement to manage, on behalf of XYZ LLC, a corresponding business owned by XYZ LLC (i.e., direct the long-term planning and decision making of such business). As a result, XYZ LLC will hold approximately 81% of the outstanding interests in New LLC. Exhibit F sets forth the final

**Analysis.** XYZ Inc. will not own 100% of the LLC interests in XYZ LLC, nor will XYZ LLC own 100% of the New LLC interests. Accordingly, neither the issuance of the Series F interests in XYZ LLC to XYZ Inc. nor the contribution of the interests in New LLC by XYZ Inc. to XYZ LLC is reportable since neither would be deemed to convey the underlying assets of the subject LLC.

[Redacted]

John Patrick Sharoc

[Redacted]

For the foregoing reasons, we do not believe that any of the parties to these transactions are required to file a Notification and Report Form under the Act with respect to any of these transactions. If you have any questions or comments regarding our conclusions, please call us.

[Redacted]

[Redacted]

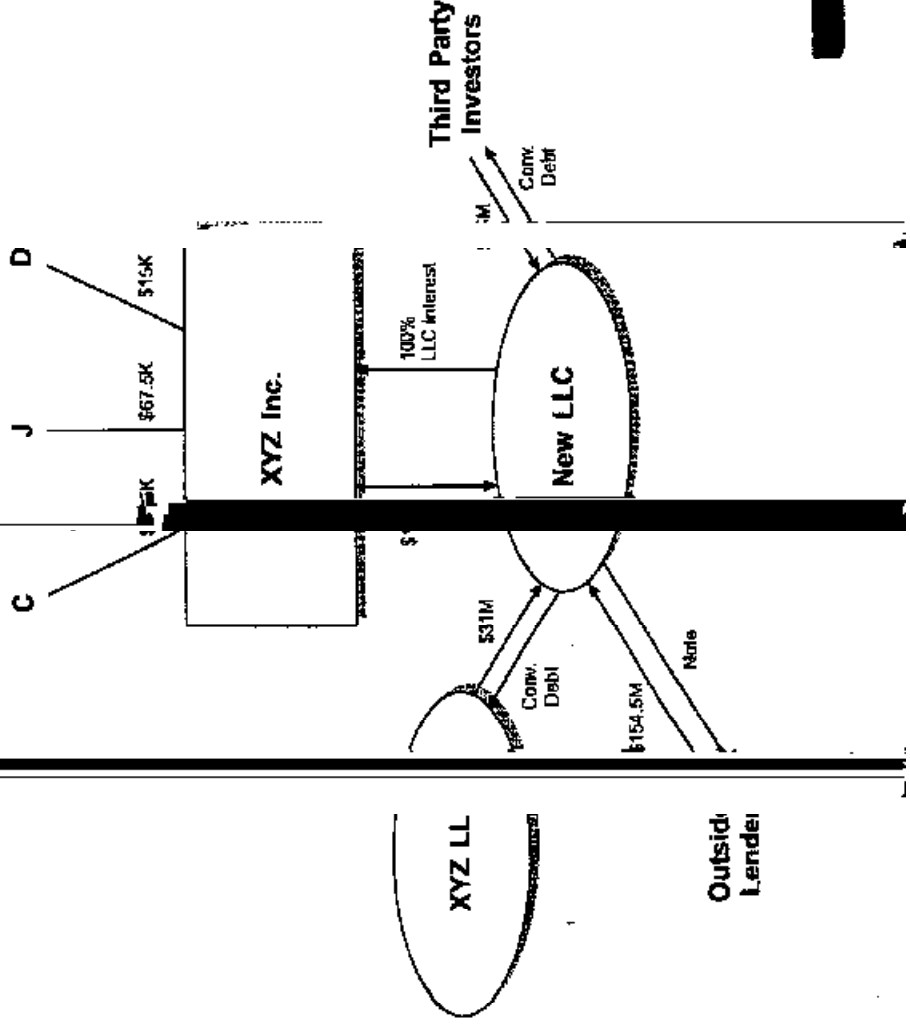
I concur with this letter.  
RS reviewed a prior draft. This letter is a final  
that addresses most of RS's concerns - exceptions

[Redacted]

3/31/98

PS

# EXHIBIT A FORMATION OF NEW LLC



# EXHIBIT B ACQUISITION OF TARGET

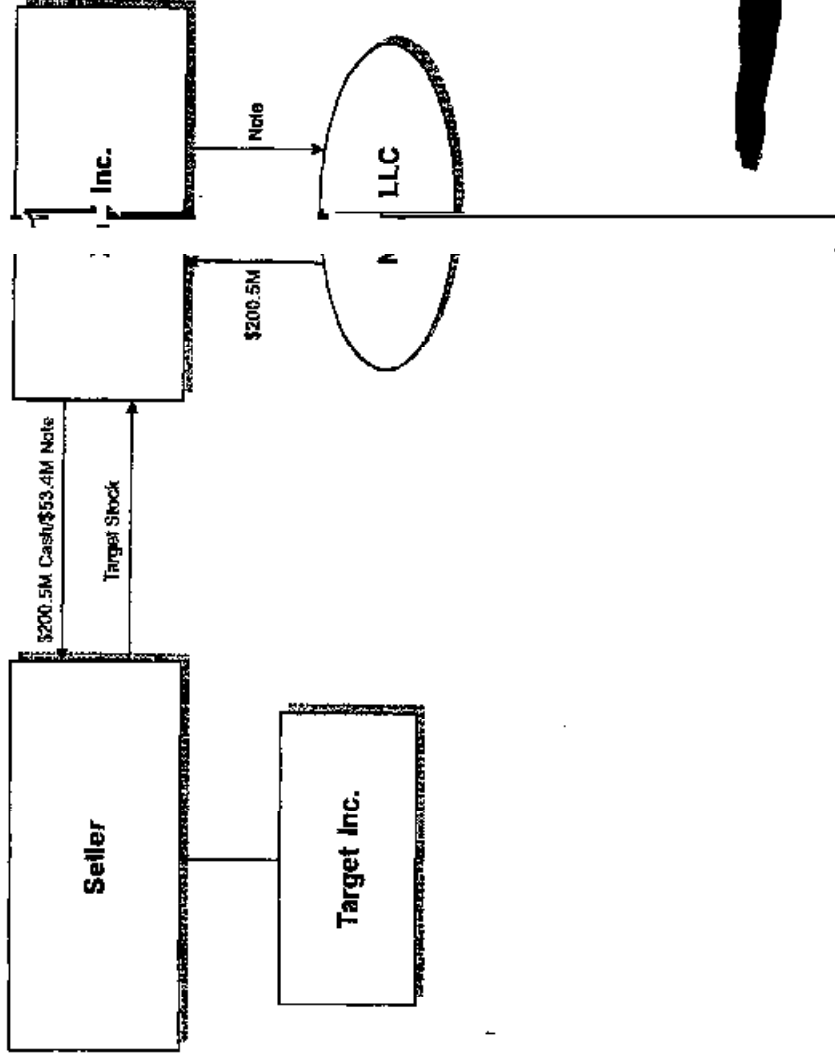
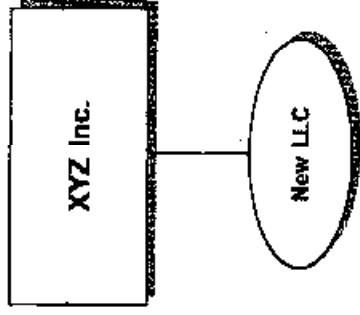
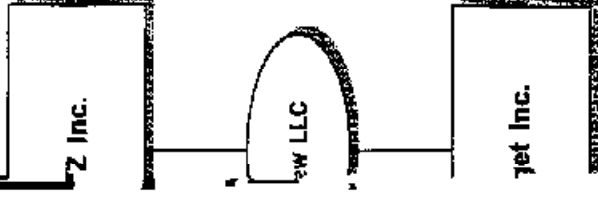
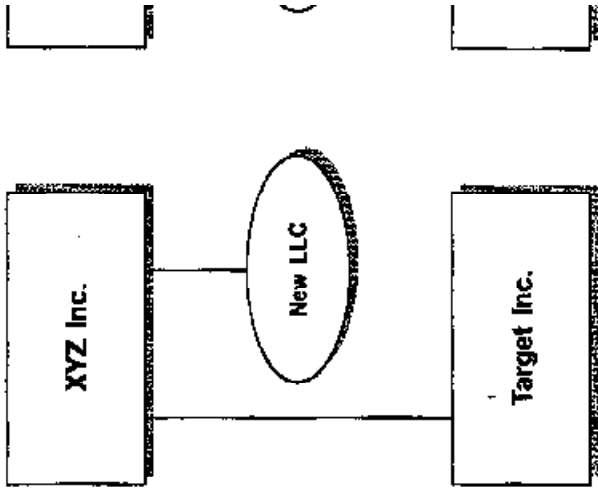


EXHIBIT C

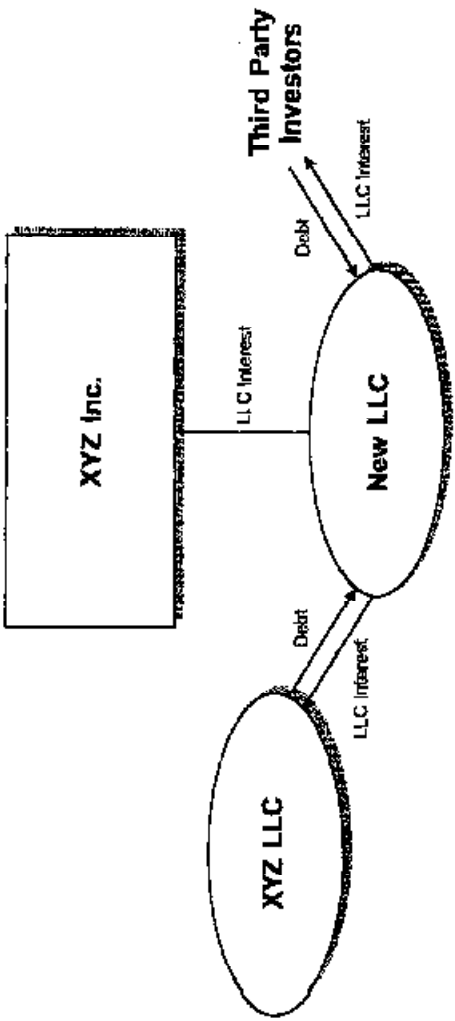
**COMBINATION OF**

**TARGET AND NEW LLC**





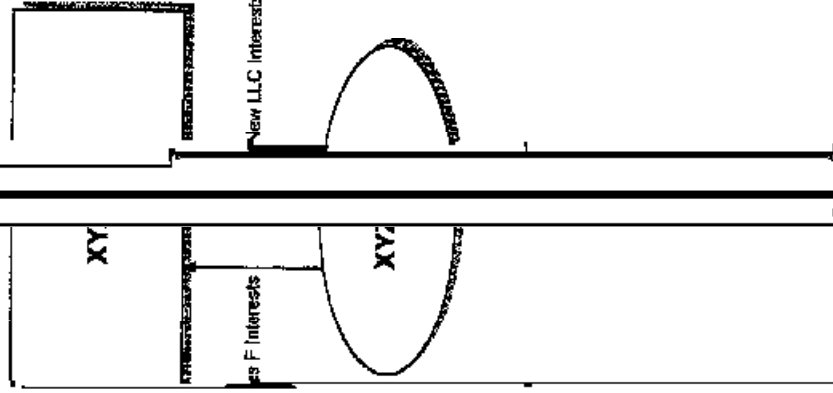
**EXHIBIT D**  
**CONVERSION OF CONVERTIBLE NOTES**



**EXCHANGE OF INTERESTS  
FOR NEW LLC INTERESTS**

EXHIBIT

**EXCHANGE OF INTERESTS  
FOR NEW LLC INTERESTS**



[Redacted]

**EXHIBIT F**  
**FINAL STRUCTURE**

