

7/11/98 2/11/98

June 11, 1998

Richard B. Smith, Esq.  
Premerger Notification Office  
Federal Trade Commission  
Sixth & Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Dick:

As requested, this letter summarizes sections five and six of the

which would be required.

**Background**

Company A, a corporation that is a \$100 million person, formed a wholly-owned subsidiary ("Sub") and contributed to it a line of business. Subsequently, Company A sold a 20% equity interest in Sub to Company B, also a corporation that is also a \$100 million person. Company B's interest in Sub took the form of preferred stock that included the right to vote for directors. The acquisition was subject to the HSR Act, filings were made, and the waiting period expired without the issuance of a second

form of preferred stock.

partnership form, however, would allow the parties to achieve their accounting objectives. In order to achieve their accounting objectives, Company A and Company B contributed their respective interests in Sub to a newly formed partnership (the "Partnership"). Because a partnership does not issue voting securities, no HSR filing was required under 801.40.



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To further complicate matters, Company A and Company B later determined that a limited liability company would be preferable to a partnership as a vehicle for holding the Sub stock and achieving the parties' accounting objectives. Accordingly, Company A and Company B formed a limited liability company (the "LLC") by directing the Partnership to contribute their respective interests in Sub to the LLC. Because the LLC did not issue voting securities, no HSR filing was required under 801.40.

The terms of the LLC agreement are unique and are tailored to meet the parties'

1. Right to Vote. Company A retain the right to direct the voting of the common
2. Right to Dividends. All common stock dividends are passed through to Company A and all preferred stock dividends are passed through to Company B.
3. Risk of Gain or Loss. All proceeds from the disposition of the common stock are passed through to Company A. All proceeds from the disposition of the preferred stock are passed through to Company B.

to control the disposition of the preferred stock. The disposition by either Company of its interest in Sub can only be achieved by disposition of that company's interest in the LLC, which is subject to a right of first refusal in favor of first, the LLC and second, the other member of the LLC. The LLC

Company A and Company B now wish to dissolve their relationship and have

THIS TRANSACTION HAS NOT BEEN REVIEWED BY THE SECURITIES AND EXCHANGE COMMISSION

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sale of the preferred stock by Company B to Company A, or (3) some other transaction or transactions that will result in Company A holding 100% of the outstanding voting securities of Sub.

HSR Analysis

I am seeking confirmation that the transaction described above will not be reportable regardless of its form.

In Scenario #1 above, the acquisition of Company B's interest in the LLC by Company A should not be reportable. Because the LLC interests are not assets or voting securities for HSR purposes, their acquisition is not reportable. By virtue of the acquisition from Company B, Company A will hold 100% of the outstanding LLC interests which is deemed to be an acquisition of the assets of LLC. This asset acquisition is potentially a reportable event. In this case, however, because (1) the only assets of the LLC are voting securities of Sub and (2) Company A is already deemed to hold 100% of the outstanding voting securities of Sub by virtue of its 80% controlling interest in the LLC, the deemed asset acquisition should be exempt pursuant to 15 U.S.C. § 18a(c)(3).

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distribution of Sub preferred stock to Company B should be exempt under 15 U.S.C. § 802.21 since Company B will not be exceeding the notification threshold for which it was cleared less than five years earlier. Alternatively, Company A and Company B's acquisition of Sub stock in the dissolution could be regarded as not even subject to the HSR Act. Given the unique structure of the LLC and the partnership that preceded it, the transfer of the Sub common and preferred stock to the Partnership and later the LLC should not be regarded as divesting Company A and Company B respectively of beneficial ownership of their common and preferred stock interests in Sub. If

Company A is regarded as maintaining beneficial ownership of its 80% equity interest in Sub and Company B is regarded as maintaining beneficial ownership of its 20% equity interest in Sub, then the dissolution of the LLC will not transfer the beneficial ownership

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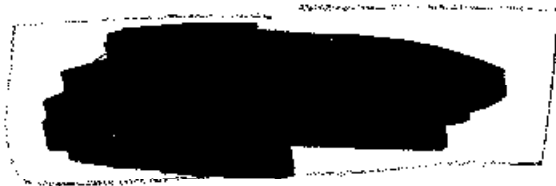
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if you could confirm the analysis above. In the meantime, I would be happy to provide

Best regards,



6/12/98 - Writer confirmed that LLC formation  
is not a tax event and would not be reportable under present  
law.

LLC, it is deemed to hold 100% of Subs' voting stock. Upon  
the purchase of the entire LLC's interest or the 20% of Subs' voting  
stock from B after distribution of the LLC would be non-reportable  
under SA (c)(3) and/or TA (c)(10). Since B filed for the  
purchase of Subs' voting stock at the 15% threshold and reached  
such threshold during the year after filing (confirmed by writer)  
it could use 80% of the distribution to satisfy such threshold (but  
not reaching the 25% threshold) within five years of the original  
filing, which is the case here. Accordingly, the beneficial  
ownership issues are not needed and not addressed for the  
resolution of these issues

RBS