

September 21, 1999

## BY FAX

Richard Smith, Esq.
Michael Verne, Esq.
Premerger Notification Office

Federal Trade Commission

Gentlemen:

I am writing to confirm our conversations of the last week or so concerning the potential applicability of the Hart-Scott-Rodino Act to the facts outlined below and to advise of certain additional facts which I have just learned that I do not believe change the analysis. I would appreciate your confirmation that this letter accurately reflects our conversations and accurately concludes that under the facts described below, HSR Act filings would not be required.

## FACTS

Company X controls a number of businesses through a number of limited liability companies. Company X is a \$100 million person. Company X also is a member of LLC, with company Y, a financial institution. When this LLC

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Although LLC-1 was designed to be held 50% by X and 50% by Y,

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contribute additional cash to the new LLC and its membership interest in the new LLC will be greater than its interest in LLC-I. For financial structuring and other

Richard Smith, Esq. Michael Verne, Esq.

-2-

September 21, 1999

husiness reasons, prior to the formation of the new LLC, X will contribute additional cash to LLC-1 and, as a result of this contribution, both X and Y, as originally intended, will be entitled to 50% of the assets of LLC-1 upon its liquidation.

## **ANALYSIS**

On these facts, you have advised that the formation of the new LLC is not subject to the HSR Act's filing requirements. The formation is not reportable because it still not involve the contribution of two or come proviously.

As Y is contributing only cash -- and the LLC which it and X each are deemed to control -- Y is not contributing a business that was "separately controlled" prior to the formation of the new LLC.

If the above description does not accurately reflect our conversations and the positions you expressed, please let me know.

Sincerely,

9/22/99. Collaborate who confirmed that

LLC-1 referred to in letter is the present white LLC

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