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TO: Mr. Joseph Krauss
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DOCUMENTS BEING SENT: Letter regarding Comment on Proposed Formal Interpretation Number 15

INSTRUCTIONS AND COMMENTS: Please (Review x) (Respond x)

OTHER:

FOR ASSISTANCE, PLEASE CALL GRACE GRANELLO (303) 292-2900, EXT. 8084

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November 12, 1998

Mr. Joseph G. Krauss
Assistant Director for the Pre-Merger Notification Office
Bureau of Competition, Room 301
Federal Trade Commission
Washington, DC 20580

VIA FACSIMILE TRANSMISSION
202-326-2624

Re: Comment on Proposed Formal Interpretation Number 15

Dear Mr. Krauss:

On Tuesday, October 13, 1998, the Federal Trade Commission published in the Federal Register proposed Formal Interpretation Number 15. This Proposed Formal Interpretation would reverse the FTC's position regarding the reportability of certain transactions involving a limited liability company. By this letter, we respectfully request the staff to reconsider Proposed Formal Interpretation Number 15.

Formation of a LLC Is Not Substantively Similar to a Corporate Merger or Consolidation.

A significant advantage to the formation of a LLC is the ability of the members to craft the form of the organization to fit the unique needs of the particular business enterprise being established. Sophisticated operating agreements often provide for governance, accounting and accountability that are simply unavailable in the context of a corporate merger or consolidation. Therefore, we suggest that any proposed formal interpretation should involve a close examination to determine whether in fact the proposed LLC formation and capitalization would in fact be substantively the same as a corporate merger or consolidation.

Proposed Effective Date.

This firm, and we suspect many other law firms and businesses throughout the nation, have relied upon the FTC's existing interpretation of LLC formations. The proposed effective date of Formal Interpretation No. 15 is December 14, 1998. Unfortunately, transactions which are in

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process in reliance upon the existing LLC interpretation but not yet closed, would appear to be subject to reporting if not closed by December 14, 1998. We believe this places an undue and unintended burden upon the public. Consequently, we respectfully suggest that if the decision of the staff is to proceed with Formal Interpretation Number 15, the effective date of this Interpretation should be delayed for at least six months to allow careful and proper planning of business combinations.


Preservation of Partnership Exemption.

We support the staff's proposal to make no modification to the partnership control rule. We believe that partnerships do not come within the public policy objectives of the Hart-Scott-Rodino Act requiring pre-merger notification.

Thank you for your consideration of our comments.

Very truly yours,

MOYE, GILES, O'KEEFE,
VERMEIRE & GORRELL LLP

By: 
Edward M. Giles, P.C.

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