

October 24, 1983

Attention: Wayne Kaplan, Esquire
Staff Attorney

Dear Wayne:

In a series of telephone calls between October 6 and October 12, 1983, I discussed with you a course of action being taken by one of my corporate clients to "spin off" to its shareholders ownership of a portion of its business operations. I initiated those discussions to obtain the benefit of your advice as to whether or not premerger notification filings would be required with regard to one particular aspect of the spin-off pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") and the regulations promulgated by the Federal Trade Commission pursuant to the Act (the "Regulations"). The transaction on which our discussions focused was one of the last of a series of steps which will comprise the spin-off: the intended distribution by my client to its principal individual shareholder (as part of a pro rata distribution to all its shareholders) of stock of a first-tier subsidiary corporation which at the time of the distribution will own, directly or indirectly, all of the assets involved in the business

issues involved led to the conclusion that no premerger notification would be required in connection with this

Federal Trade Commission

OCTOBER 24, 1963

Page Two

ual shareholder as "Mr. X.", and to my client's first-tier

family" into two groups instead of the present one. After the spin-off, Corporation A and its subsidiaries will own all assets now owned by the Corporation A group which relate

holding exactly the same amounts and types of stock in Corporation B.

Corporation A. A trust of which Mr. X is one of two cotrustees holds (and will hold) all the stock of Corporation A.

while the instrument governing this trust gives Mr. X voting control of all stock of Corporation A (or any successor

The fair market value of the Corporation B voting stock to be distributed to Mr. X in the spin-off will be subject to

and sale transaction, there is no "acquisition price" for the Corporation B stock to be distributed to Mr. X and the other Corporation A shareholders.

For purposes of our earlier discussions, we assumed

exemption from such filings is available. You and I discussed the possible application of three separate exemptions to this stock distribution, and the following paragraphs are intended to summarize our discussions and conclusions in

Regulation 802.30 Intra-Person Exemption

A Regulation 802.30 exemption is available if "by reason of holdings of voting securities" an individual acquiring stock controls the corporation whose stock he is

control of both corporations A and B derives from the combination of his ownership of Corporation A voting securities

exemption unavailable for the distribution of Corporation B stock to Mr. X.

Regulation 802.10 provides that "the acquisition of

Page Four

Regulation 802.20 exempts from the requirements of the

is \$15,000,000 or less. The value of the voting securities of Corporation B which will be held by Mr. Y after the spin-

tion, this acquisition will be exempt under regulation 802.20. Clearly Mr. X will hold 33% of the voting securities of Corporation B as a result of the stock split.

Corporation B's voting securities attributable to the trust for which he serves as cotrustee.

This is so because under the definition of the term "control" contained in Regulation 801.1(b) Mr. X does not

801.1(c) makes clear that a trust--and not its trustee--is considered to be the holder of all voting securities constituting the corpus of the trust. Moreover, as stated in the example contained in that Regulation paragraph a "trustee

aggregate its holdings with those of any trusts for which it serves as trustee."

Corporation B, and his acquisition of those securities will

after the spin-off.

Page Five

CONCLUSIONS

change in the degree of control that Mr. X or any other shareholder has over Corporation B, my client and I feel that the spin-off is not the sort of "acquisition" that the Act

to forego submittal of premerger notification filings to your agency and the Justice Department in connection with

many rights in order that the spin-off can be completed at the earliest possible date, and because it would take some time to prepare them if premerger notifications need to be filed, it

Sincerely yours,