

[REDACTED]

(14)

[REDACTED]

[REDACTED]

March 10, 1987

shall not be subject to
penalty provision of
(h) of the Clayton Act
its release under the
Antitrust Act

MAIL ROOM

Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
Washington, D.C. 20580

which
which
Freedom

RECEIVED
MAR 29 PM '87

Re: [REDACTED]

Dear Ms. Heban:

This letter will confirm certain amendments that the parties have

made to the Report Form ("Report Form") filed by [REDACTED]
with the Federal Trade Commission and the Antitrust

Division of the Department of Justice during the [REDACTED]
period with respect to this transaction prior to the end of that
month.

amendments to the transaction would, in effect, decrease the
"holdings" of the [REDACTED] from those initially described in the
Report Form. We are asking for your guidance as to (1) whether
the amended transaction is exempt from the premerger notification
regulations and (2) if not exempt, the actions that we need to
take in order to amend the previously filed Report Form.

As you may recall, the Report Form indicated that [REDACTED] and [REDACTED]
[REDACTED] would form a new
corporation, [REDACTED]
Delaware for-profit stock corporation. [REDACTED] would
each contribute \$200,000 as capital to [REDACTED] in return for fifty
(50) percent of the voting common stock of [REDACTED]. The parties
would then enter into a management agreement with [REDACTED]

[REDACTED] and [REDACTED] this part of the transaction has remained
unchanged. We concluded that the formation of [REDACTED] would not be

[REDACTED]

Linda Heban, Esquire
March 10, 1987
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subject to the premerger notification requirements because the parties did not, and do not, contemplate that the assets of [REDACTED] would ever reach the minimum dollar amounts specified in 16 CFR §801.40(b).

that [REDACTED] would amend and restate their respective articles of incorporation, if necessary, and bylaws to provide that the directors of [REDACTED] would become voting "Members" of [REDACTED]. The Members, in turn, would have had the right to elect the entire Boards of Directors of [REDACTED].

As we explained in our letter of December 22, 1986, which accompanied the Report Form, we believed that this part of the original transaction was also exempt from the premerger notification regulations. Although state law expressly permitted the plans to have voting members, neither [REDACTED] could issue securities under their respective state [REDACTED]. We therefore concluded that the issuance of membership

of membership rights in [REDACTED] and [REDACTED] as being analogous to the acquisition of voting securities in a for-profit stock corporation.

This part of the transaction has been changed. Under the amended proposal, each [REDACTED] will elect four (4) of its own directors to the Board of Directors of [REDACTED]. In addition, each also, by the mechanism of a bylaw change, will

1. [REDACTED] will have nine (9) directors. Four (4) directors will be elected by each [REDACTED] plan. The [REDACTED] will serve as the ninth director.
2. [REDACTED] will have twenty-four (24) directors. Four (4) of these directors will be the directors elected to the [REDACTED].
3. Similarly, [REDACTED] will have nineteen (19) directors. Four (4) of these directors will be the directors elected to the [REDACTED].

[REDACTED]

In other words, there will be eight (8) interlocking directors between [REDACTED]

We do not believe that the premerger notification regulations

recognizes in its bylaws the other plan's right to appoint four (4) directors to its Board, who will also serve on the [REDACTED] Board. We do not believe that such a right is equivalent to the acquisition of voting securities within the meaning of the premerger notification regulations.

We hope that you agree. If you do not, however, we hope that you

or these changes by your agency and the Department of Justice. The Board of Directors of both [REDACTED] have approved the

necessary bylaws changes at a board meeting scheduled for March 14, 1987.

Your assistance in this matter will be very much appreciated.

Best regards,

[REDACTED]

[REDACTED]

cc: [REDACTED]

3/10/87 Called [REDACTED] & told her
not to re-file. L.H.