

801.1(a)(2); 801.1(b), 17(c)(1)

[REDACTED]

This matter may be subject to the confidentiality provisions of Section 74(b) of the Internal Revenue Code which restricts the Freedom of Information Act

December 27, 1991

Richard Smith, Esq.  
Thomas Hancock, Esq.  
Pre-Merger Notification Office, H-303  
Federal Trade Commission  
Washington, D.C. 20580

Re: [REDACTED]

Dear Mr. Smith and Mr. Hancock:

The purpose of this letter is to request an informal determination in connection with the filing of a pre-merger notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). The need for a filing arises because [REDACTED] nonprofit public benefit corporation (the "Foundation") [REDACTED] acquiring [REDACTED]

can properly make a single filing on behalf of its constituent entities. The corollary would be that Foundation, and the "acquiring person of which it is a part," is also obligated to make only one filing.

Background

The [REDACTED] is a system of commonly-owned health care [REDACTED]

hospital known as [REDACTED] (the [REDACTED], and its associated medical clinics. The [REDACTED] is a [REDACTED] bed proprietary hospital located in [REDACTED]. The [REDACTED] also operates a number of medical clinics, also located in [REDACTED] which provide outpatient medical and [REDACTED]

[REDACTED]

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Thomas Hancock, Esq.  
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ancillary services (the [REDACTED]). The [REDACTED] has three constituent entities that are being acquired and are contemplating [REDACTED]

medical partnership consisting of the [REDACTED] Partners and approximately [REDACTED] physician employees. Members of the [REDACTED] also operate and staff the [REDACTED]. The [REDACTED] has a closed staff, and only members of the [REDACTED] and community-based physicians under contract to the [REDACTED] are permitted to admit patients to its facilities. The [REDACTED] revenues are therefore derived exclusively from services provided to patients of the [REDACTED]

The Hospital Corporation. The [REDACTED] is owned and operated by [REDACTED] the [REDACTED]. Under the bylaws of the [REDACTED]

order to insulate the members of the [REDACTED] from liability for the [REDACTED] operations, and to avoid the need to obtain

<sup>1</sup> In addition to the entities described below, the [REDACTED] includes two real estate partnerships, Building Company I and Building Company II, which own the real property in which the Clinics are operated. All the partners of the [REDACTED] are also partners of these partnerships, and they share common management with the [REDACTED] and the [REDACTED]

acquired persons, because the acquisition of their assets falls within the exemption for the acquisition of realty in the ordinary course of business under 16 CFR § 802.1. Moreover, with respect

transaction threshold under 16 CFR § 802.20.

accreditation of the [redacted] hospital facilities.<sup>2</sup> The [redacted] and the [redacted] however, share common governance and management, as described below.

[redacted] of [redacted] is a California general partnership which owns the real estate and improvements in which the [redacted] is operated, and leases them to the [redacted]. The partners of [redacted] are the same [redacted] of the [redacted]. The income of [redacted] is [redacted].

Under the proposed transaction, the [redacted] the [redacted] all of their assets to the [redacted] which will operate them as a nonprofit hospital and associated outpatient clinics.

Common Ownership and Management

Through their interlocking partnership interests and stock, the Partners are the common owners of the [redacted] the [redacted]. The Partners own identical fractional interests in the three entities. This common ownership is reflected in the governance and management of the [redacted].

The Partners have elected a group of [redacted] from [redacted].

<sup>2</sup> The [redacted] is accredited by the Joint Commission on [redacted] and accredits hospital facilities. The [redacted] which inspects [redacted] are accredited by the [redacted] of the [redacted] which accredits ambulatory care facilities.

<sup>3</sup> The Partners hold their partnership interests and stock as individuals, so there is no single owner of the three entities.

Richard Smith, Esq.

management for all three organizations.<sup>4</sup>

Below the level of executive management, the [redacted] and the [redacted] employ separate staff to perform dedicated functions, but they share common office and other facilities, and use the same staff to perform common services.

#### Single Financial Interest

The [redacted] is an integrated financial system. Its revenues are derived from services provided to persons who are patients of the [redacted] and, if hospitalization is required, rental payments made by the [redacted] to [redacted] and by the [redacted] to [redacted] Holding Companies I and II. All the constituent entities share a Chief Financial Officer, and their financial statements are presented on a consolidated basis.

#### Conclusion

If the Partners combined into an organization having a discrete legal existence for the purpose of holding their interests in the [redacted] the [redacted] and [redacted] there would be no question but that they would constitute a single "ultimate parent entity" for purposes of the anticipated filing. The fact that they hold those interests as individuals is a technical matter, made the more so by the identity of the organizations from a governance, management and accounting point of view. For all practical purposes, the [redacted] is a single organization, and we hope that you will agree that [redacted]

structure.

allocations for the cost of the Executive Directors' services.

