

By UPS

Premerger Notification Office Paterial May De subject the Bureau of Competition Federal Trade Commission Washington, DC 20580

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Application of the Hart-Scott-Rodino Act to the Merger of Commonly Held Nonprofit Entities

Dear Ms. Ovuka:

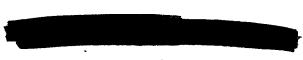
We recently spoke about the potential applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, ("the Act") to a proposed merger of jointly-owned nonprofit entities. In accordance with your suggestion, I am submitting this description of the transaction so that the Federal Trade Commission may better consider whether the transaction, a proposed merger between related nonprofit institutions I will refer to as Sub B and Sub C, is exempt from the filing requirements of the Act.

The current structure of the entities is as follows.

parent entity ("Parent") and Sub B, Parent currently has the power to appoint 50 percent of the board of directors of Sub B. Parent also has the contractual authority to appoint 50 percent of the board of directors of Sub A, the corporate member of Sub B.

accomplished through resolutions by the boards of Sub B and Sub C anarguina.tha margar hut millinelade se anakanes es

then, use fair market Value



Nancy Ovuka, Esquire

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January 22, 1993

The proposed merger will have no impact on existing competition and will permit substantial cost-savings and greatly enhance the efficiency of both nonprofit entities by combining and streamlining administrative functions now performed separately by each.

As an initial matter, this transaction may not constitute an "acquisition" within the meaning of the Act. Parent currently holds all of the assets of Sub A, Sub B and Sub C pursuant to 16_C.F.R. & 801_1(c)(R) because each of those

Accordingly, no new entity will "hold" assets or voting securities "as a result of" the transaction within the meaning of the Act. 15 U.S.C. § 18a(a)(3). After the transaction, as now, Parent will control all of the entities and hold all of their assets within the meaning of the regulations.

In addition, although these nonprofit entities have no voting securities, it is instructive to consider the treatment under the regulations of mergers between entities that are controlled by the same parent through the ownership of voting securities. Such transactions are exempt from the Act as intraperson transactions. 16 C.F.R. § 802.30. The exemption of a margar between related entities controlled through voting

Although the Federal Trade Commission apparently has

transaction does not involve the acquisition of a corporate membership. Accordingly, the requirement that mergers be analyzed as acquisitions of voting securities, 16 C.F.R. § 801.2(d)(1)(i), coupled with the exemption for the acquisition of voting securities between entities controlled by the same ultimate parent

because if the entities were for-profit, stock corporations,
Parent's current control undoubtedly would be sufficient to exempt

Furthermore, under the current interpretation of the

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single general partner who held a majority interest in both, the merger of the two partnerships into one would not trigger the reporting requirement.

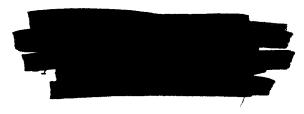
pende business form, would not require a fifting. Hothing in the

above, this proposed merger would not be reportable under the Act.

I ap<u>preciate vour willingness to consider these</u>

transaction, please do not hesitate to call me. Timing is of critical importance to my client, and therefore, we look forward to hearing from you at your earliest possible convenience.

Sincerely,



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