

807.30  
801 1(e)(8)  
801.1(b)(2)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

TELETYPE DIRECT DIAL NUMBER

[REDACTED]

January 22, 1993

By UPS

Nancy Ovuka, Esquire  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Washington, DC 20580

This material may be subject to  
a confidentiality provision of  
section 74 (h) of the Clayton Act  
which restricts release under the  
Freedom of Information Act.

Re: 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. Parent accordingly controls both Sub A and Sub B within the

[REDACTED]

accomplished through resolutions by the boards of Sub B and Sub C approving the merger but will include an exchange of

*then, use fair market value*

[REDACTED]  
Nancy Ovuka, Esquire

-2-

January 22, 1993

*used for the  
of-person test*

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)(8) because each of those entities is included within Parent, as explained above. 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 merger between related entities controlled through voting

[REDACTED]  
Although the Federal Trade Commission apparently has taken the position in the past that the acquisition of the

[REDACTED]  
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 the transaction from the filing requirements under § 802.30

Furthermore, under the current interpretation of the regulations, acquisitions of nonprophic interests are not subject

[REDACTED]  
Nancy Ovuka, Esquire

-3-

January 22, 1993

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

*Partnership  
mergers  
are not  
covered  
SEC*

under business law, would not require a filing. Nothing in the statute or the regulations or their histories suggests that

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

*Partnership  
interest  
may be*

I appreciate your willingness to consider these

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.

*Reportable*

Sincerely,

[REDACTED SIGNATURE]

*1/22/93*

*PMN can't demand 802.30 to include*

*Hi [REDACTED] of [REDACTED] [REDACTED] [REDACTED]*

*0*