

201.11(e)
801.11(e)
C-4

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May 27, 1994

VIA HAND DELIVERY

Mr. Patrick Sharpe
Compliance Specialist

This material may be
confidentiality matter.

JUN 1 12 00 PM '94
FEDERAL TRADE
COMMISSION
PREMERGE NOTIFICATION
OFFICE

6th and Pennsylvania Aves., N.W.
Washington, D.C. 20580

Dear Patrick:

This is to confirm our telephone conversation the Thursday, May 19, 1994 and
Wednesday, May 25, 1994 in which the following facts were discussed:

Agency A an agency created by a state legislature to "be an independent agency

trust funds," proposes purchasing, on behalf of a state employee retirement fund
qualified under § 401 of the Internal Revenue Code ("Trust"), in excess of 50%
of the voting securities of Newco, a newly-created corporation with no regularly

Company B for approximately \$24 million. Agency A and Company B each

sole investment control over its assets. Newco's initial capitalization will consist

[REDACTED]

Mr. Patrick Sharpe
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Does this trust
meet the test on page 1
as an agency of the State?
yes

Based on our telephone conversations, it is my understanding that the formation of Newco will not be reportable under the Hart-Scott-Rodino Act and 16 C.F.R. §801.40 even though Agency A and Trust each have assets in excess of \$100 million and Newco will initially have raised capital contributions in excess of \$10 million. Under 16 C.F.R. 801.1(a)(2), the term "entity" is defined expressly to exclude a state agency and the FTC staff has applied this reasoning to state trust. The definition of "person" in 16 C.F.R. §801.1(a)(1) means an "ultimate parent entity and all entities which it controls." Thus, for Hart-Scott-Rodino purposes

"person" with reporting requirements. The other shareholders of Newco also will not have any reporting requirements in connection with the formation of Newco under 16 C.F.R. §802.20 since none will be contributing \$15 million or more nor controlling Newco.

Furthermore, we understand that the purchase of the division of Company B by Newco will not be a reportable event under the Hart-Scott-Rodino Act. Even though Trust will be the beneficial owner of greater than 50% of the voting securities of Newco, Newco will be considered its own "ultimate parent entity" since neither Agency A nor Trust will be able to be an "ultimate parent entity" under the rules. Under 16 C.F.R. §801.11(e), the total assets of an

connection with Newco's acquisition of the assets of the division of Company B.

Please let me know as soon as possible whether I have in any way misunderstood the position of the FTC Premerger Notification Office staff. As always, I appreciate your assistance in this matter. Best regards.

Sincerely,

[Redacted signature]

contacted [Redacted]
I concur with this
letter. (PS)

RS concurs