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FEDERAL TRADE COMMISSION  
PREMERGER NOTIFICATION OFFICE

By Fax

Melea Epps, Esq.  
Federal Trade Commission  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Washington, DC 20580

This material may be subject to confidentiality provisions of Section 24(h) of the Clayton Act which restricts release under the Freedom of Information Act.

Re: Hart-Scott-Rodino Act Notification

Dear Melea:

Thank you for taking the time yesterday to discuss this matter with me. I am writing to confirm the conclusion of our discussion which was that no new Hart-Scott filing would be necessary in the situation outlined below

As we discussed, a Hart-Scott filing was made nearly a year ago for a transaction and remained without a second request. At the time of the filing, it was

necessary to divide the transaction into two phases. The first phase of the acquisition occurred but the second phase has not yet occurred and is not expected to occur within a year of the expiration of the waiting period. The question is whether the acquisition for which the filing was made was necessary, thus making a second filing unnecessary.

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**The Parties**

The transaction involves the affiliation of two separate entities. One of the entities is a non-profit, non-stock corporation with a number of subsidiaries. The other entity is an incorporated non-profit, non stock corporation and that owns a number of and also engages in and other activities. The principal is not a subsidiary, but rather a division within the corporation. (The through a subsidiary.) Please note that these are fictional names and that the actual identities of the entities are given at the end of this letter.

**The Planned Transaction**

sole member of It would also become the sole member of a new corporation, "Newco," which would be formed to own the business of and to operate that were formerly owned and operated by Newco would either own or have a long term lease on the real property. As will be discussed in more detail below, this is still the way in which the parties ultimately intend to accomplish the transaction, but they have now decided to divide the transaction into two phases.

**The Hart-Scott Filing**

The formation of Parent was not reportable because took back any voting securities in parent, making § 801.40 inapplicable. Parent's becoming the sole member was also not reportable because Parent did not meet the size of

person" and as the "acquired person."

**Phase One**

After the Hart-Scott filing was made, it became apparent that, due to the need to meet certain bond requirements and obtain certain regulatory approvals, it was not possible to complete

Under Phase One, Parent was made the sole member. In addition,

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operations of the [REDACTED] Operating Committee. The [REDACTED] Operating Committee was created as an "Other Body" under [REDACTED] law. The state statute defines an "Other Body" as a person or group, other than the board of Trustees or a committee of the board of Trustees, who may be given, by the bylaws of the corporation, powers that, if not vested in the Other Body, could be exercised only by the membership of the corporation as a whole, by the delegates of the members, or by the board of directors.

The [REDACTED] Operating Committee is presently controlled by the Parent by virtue of the

[REDACTED]  
parties.

**Phase Two**

Phase Two of the transaction has not yet been completed. Newco has been created but the [REDACTED] assets have not yet been transferred to it. In large part, this delay is due to the fact

[REDACTED] Operating Committee will serve as Newco's initial board of directors. As stated above, Parent will be the sole member of Newco and the business and operations of the [REDACTED] previously owned by the [REDACTED] will be transferred to Newco, but that will be an intrapersonal transaction and thus not taxable. Therefore, all of the [REDACTED]

would  
not  
meet

size-of-person test —

acquired the business of the [REDACTED] so that no additional Hart-Scott filing will be required at the time the business and operations of those [REDACTED] are transferred to Newco and the Parent is made the sole member of Newco?

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**Identities of the Parties**

When I initially spoke with you and prepared a draft of this letter, we did not yet have permission from our client to reveal the identities of the parties. We now have that authority and would like to do so.

The "Parent" is identified in the filing as the [redacted].

letter to confirm that your conclusions remain the same.

Thank you very much for taking the time to discuss this issue with me. You can reach me at [redacted].

Sincerely,

[redacted signature]

Enclosures

I spoke with [redacted] on 12/14 after consulting [redacted]

has sufficient control and ownership of [redacted] to make a new filing unnecessary. Since the previous filing already covered the substantive transaction, we have concluded that the parties do not need to refile. This conclusion is for this specific fact pattern only.