

VIA HAND DELIVERY

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Premerger Notification Office
Bureau of Competition
Federal Trade Commission

I. Facts

The proposed transaction involves two

of

nonprofit non-membership corporation, qualified under Internal Revenue Code § 501(c)(3),
which operates (either directly or through one or more subsidiaries) three
two located in

and several othe

elated facilities. An affiliated charitable
foundation supports the educational and research activities of

A second charitable



charitable mission with the and has a sen-perpetuating Board of Directors.

for-profit membership corporation, qualified under I.R.C. § 501(c)(3). The members of

The Reard of Directors of the members of

exempt as well as several other related facilities as an affiliated charitable foundation.

The Board of Directors on the also are the members of and, in such capacity, elect its Board of Directors.

Inc. is a tax-exemp and of the corporation, qualified under I.R.C. § 501(c)(3), which operates a skiller

which would manage and operate the and other and other elated facilities of the parties and their affiliates as an integrate would prefer to effect a merger and have the joint venture acquire title to all of the parties and structurally integrate their operations, but are prevented from doing so by the guidelines of the parties have instead adopted the proposed structure explained below.

Newco will be a tax-exem nonprofit membership corporation qualified under I.R.C. § 501(c)(3). (A copy of the Affiliation and Management Agreement (the "Agreement") is attached hereto as Appendix 1.) will be the members of the corporation. Newco will be governed by a 20 member Board of Trustees. will appoint 10 Trustees: vill appoint 7 Trustees; and the Board will appoint 3 as Trustees, 2 from a snaw submitted by a In addition, the President of Newco, the senior and 1 from a slate submitted by executive officer of ne senior executive officer of and th vill be ex officie, non-voting members of the Board.

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memors or each of the Board of Directors of the will continue to have sole authority to elect the respective governing boards of the sole authority to elect the respective governing the sole authority the sole authority the sole authority the sole authority the sole

Under Section 4.1 of the Agreement, Newco would be granted the power to manage and direct the operations of the In addition, under Sections 4.2 and 4.4 of the Agreement,

of any participant.

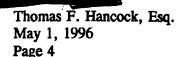
To complete as fully as practicable the financial integration and operation of the parties also have agreed to an income/loss-sharing arrangement. Under the Agreement, the

of \$8 million and the second of \$2 million, the total net income of \$2 million, the total net income of \$10 million would be allocated 75/25, with the second credited \$7.5 million and predited \$2.5 million. Under Section 7.3 of the Agreement, each of the parties would

II. Analysis

The parties believe that the formation of Newco would not be reportable under the HSR Act because it would constitute the formation of a not-for-profit joint venture. It is the parties' understanding that the Premerger Notification Office of the Bureau of Competition of the FTC views the formation of not-for-profit joint ventures as non-reportable transactions through the relationship between 16 C.F.R. § 801.40 and 16 C.F.R. § 802.40.

The question arises whether the contractual rights to operate and manage the granted to Newco affect reportability. In the parties' view, they do not. First, the contractual rights do not convey the right to elect any trustee or director of any entity. Second, the contractual rights



do not convey the right to an equity ownership interest in any of the facilities. Finally, even if Newco's assets were deemed to include those of the facilities would nevertheless be the formation of a not-for-profit joint venture, are thus not reportable.

income of the venture. However, this does not mean that the has a right to receive

credited to Moreover, even if one were to assume that, under the income loss-sharing

reportable transaction had taken place. In many instances, non-reportable events occur which

Enclosure called the writer and told him that the formation of Newson is not a reportable ment premarily freeze these more reportable ment premarily freeze these more would be more would be the contract of the result of whether however would be the contract of the contr

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