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Re: 80.40 P  
Re: 802.40

[REDACTED]

[REDACTED]

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May 1, 1996

**VIA HAND DELIVERY**

Thomas F. Hancock, Esq.  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
4th Floor, Pennsylvania Avenue, N.W.

Re: Not-For-Profit [REDACTED] Formation of Joint Venture Management and Operating

Dear Tom:

[REDACTED] not for profit [REDACTED] have proposed the joint operation of their [REDACTED]

be titled in the joint operating company. The parties do not believe that the proposed transaction

**I. Facts**

The proposed transaction involves two [REDACTED] of [REDACTED] is a tax-exempt nonprofit non-membership corporation, qualified under Internal Revenue Code § 501(c)(3), which operates (either directly or through one or more subsidiaries) three [REDACTED] two located in [REDACTED] and several other [REDACTED] related facilities. An affiliated charitable foundation supports the educational and research activities of [REDACTED]. A second charitable

[REDACTED]

✓

charitable mission [redacted] is associated with the [redacted] and has a self-perpetuating Board of Directors.

[redacted] is a tax-exempt [redacted] not-for-profit membership corporation, qualified under I.R.C. § 501(c)(3). The members of [redacted] consist of [redacted] individuals, each of whom is a member in good and regular standing in the [redacted]

The Board of Directors of [redacted] are the members of [redacted] and, in such capacity, elect the Board of Trustees of [redacted] as a tax-exempt not-for-profit corporation, qualified under I.R.C. § 501(c)(3), which operates an [redacted] located in [redacted] as well as several other [redacted] related facilities. [redacted] also has an affiliated charitable foundation.

The Board of Directors of [redacted] also are the members of [redacted] and, in such capacity, elect its Board of Directors. [redacted] Inc. is a tax-exempt not-for-profit corporation, qualified under I.R.C. § 501(c)(3), which operates a skill [redacted]

[redacted] propose to form a joint venture company ("Newco") which would manage and operate the [redacted] and other [redacted] related facilities of the parties and their affiliates as an integrated [redacted]. The parties would prefer to effect a merger and have the joint venture acquire title to all of the assets of the parties and structurally integrate their operations, but are prevented from doing so by the guidelines of the [redacted]. For these reasons, the parties have instead adopted the proposed structure explained below.

Newco will be a tax-exempt [redacted] 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.) [redacted] will be the members of the corporation. Newco will be governed by a 20 member Board of Trustees. [redacted] will appoint 10 Trustees; [redacted] will appoint 7 Trustees; and the Board will appoint 3 [redacted] as Trustees, 2 from a slate submitted by [redacted] and 1 from a slate submitted by [redacted]. In addition, the President of Newco, the senior executive officer of [redacted] the senior executive officer of [redacted] and the [redacted] will be ex officio, non-voting members of the Board.

[REDACTED]  
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[REDACTED] each will retain its separate corporate existence. The members of each [REDACTED] and the Board of Directors of [REDACTED] will continue to have sole authority to elect the respective governing boards of [REDACTED] and [REDACTED].

Under Section 4.1 of the Agreement, Newco would be granted the power to manage and direct the operations of the [REDACTED]. In addition, under Sections 4.2 and 4.4 of the Agreement, Newco would develop a [REDACTED] plan for the [REDACTED] and under [REDACTED]

[REDACTED]  
of any [REDACTED] participant.

To complete as fully as practicable the financial integration and operation of the [REDACTED] the parties also have agreed to an income/loss-sharing arrangement. Under the Agreement, the [REDACTED] will share the [REDACTED] of the economic outcome of the [REDACTED]. All revenue and [REDACTED]

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

## 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 [REDACTED] 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 [REDACTED]

[REDACTED]

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

[REDACTED]  
income of the venture. However, this does not mean that [REDACTED] has a right to receive 75% of the income of the [REDACTED] facilities, unless it does not otherwise

[REDACTED]  
income of \$2 million, but \$500,000 of the net income of the [REDACTED] facilities was credited to [REDACTED]. Moreover, even if one were to assume that, under the income-sharing [REDACTED] [REDACTED] to be deemed to be an additional ultimate parent entity of the

[REDACTED]  
reportable transaction had taken place. In many instances, non-reportable events occur which result in a reportable event under the USRA Act. After you have had an opportunity to review

Sincerely,  
[REDACTED]

Enclosure

Called the writer and told him that the formation of Newco is not a reportable event primarily because there is no requisition. The assets are being transferred to Newco. We did not reach the issue of whether Newco would be a reportable event.

TFH

[REDACTED]