

802,2.  
801.199X

[REDACTED]

May 10, 1996

**VIA FACSIMILE**

Compliance Specialist  
Federal Trade Commission  
6th Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

[REDACTED]

Dear Mr. Sharpe:

I am writing to confirm our conversation yesterday wherein we discussed the following transaction.

We represent [REDACTED] which has entered into an agreement to acquire voting common and non-voting preferred stock of [REDACTED]. Presently, 100% of the voting securities of [REDACTED] are owned by the [REDACTED]. Pursuant to the agreement, at the end of a multi-step transaction, the capital structure [REDACTED] will be as follows:

[REDACTED]

The [REDACTED] Living Trust will be retaining, not acquiring these shares.

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

Mr. Patrick Sharpe

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The purchase price of the voting common stock and of the non-voting preferred stock is based upon the economics of the transaction and tax considerations of the sellers. It is the only basis upon which the sellers were willing to enter into the transaction.

We have concluded that based upon an application of Section 801.10(a)(2)(i) and 802.20(a) of the Rules promulgated pursuant to Section 7A(d) of the Clayton Act, 15 U.S.C.

view, even if subsequent to the transaction, an entity other than the parties thereto, might assign a different value to the two classes of securities.

The purchase price allocation was determined without any reference to the parties'

under the Act. Indeed, our client is prepared and would prefer to file notification

I would appreciate upon review of this letter, your giving me a call and confirming your advice to me yesterday that you concur in our determination that the transaction

[REDACTED]

Based on all of the facts, you have made the determination that it is not reportable. (Assuming the size-of-person test is met). I concur that this transaction is exempt by [REDACTED] under Section 802.20(b) based on the chart on page 1 that shows a purchase price of \$525,000 for 37.5% of the V/S and this is not an avoidance device.

[REDACTED]

[REDACTED]

[REDACTED]

PAID 70(2)(2) - 8004

**PROPOSED REAL ESTATE HOLDING COMPANY  
SUPPORTED BY BARE BONES BUILDING LEASES**

**FACTS**

1. Company A is a manufacturer of finished products.
2. Company B is a purchaser of A's products and desires to provide financing that would generate more effective cash return than a loan and will facilitate

... have signed a long-term supply agreement, for which A requires additional capacity.

3. Company A owns substantial industrial development lands and real estate investments that it desires to use to (1) secure cash without incurring debt or

**ASSET BACKED FINANCING PROPOSAL**

4. Company A will form a real estate holding company ("Real Estate Holding Co."). Company A will transfer to Real Estate Holding Co. certain land, valued at approximately \$1 million, on which the new multi-purpose building is proposed to be built by Real Estate Holding Co.. The land is vacant and adjacent to a Company A manufacturing facility which is not part of the transaction. The land is presently not income producing and has not generated any revenues during the preceding 36 months.

Company B has agreed to contribute \$100,000,000 in a demand note to Real Estate Holding Co.. At the same time as Company B's contribution, Company A would contribute a demand note and industrial surplus lands to Real Estate

\$100,000,000 and 20% voting rights, and Company A would retain common stock with a stated value and fair market value of \$400,000,000 and 80% voting rights. The preferred stock to be received by Company B would have a preferred right to fixed dividends on a semi-annual basis.

addition, a demand will be made immediately for payment of \$40 million of

The following is Real Estate Holding Co.'s pro forma initial balance sheet:

Assets		Liabilities	
Land	\$1,000,000	Debt	\$ 0
Industrial Revenue Bonds (currently owned by A)	\$300,000,000	Common Equity	\$400,000,000
Company A Note	\$ 20,000,000		
	\$1,300,000,000		\$400,000,000

5. Real Estate Holding Co. will lease the (headquarters building and the multi-purpose building to be built) and land to Company A. The rental of the land and buildings and interest on the industrial revenue bonds and Company A's Note are anticipated to be sufficient to pay preferred dividends to Company B.
6. Company A will exercise sole control over the operation of any businesses carried out in the leased buildings. Both leases will be "bare bones" leases with the lessee responsible for installation of partitions and equipment needed.

**BARE HEADQUARTERS OFFICE BUILDING.** The office building is 6 years old and during the six years it has been used by Company A for its headquarters' office space. Company A currently plans to continue to use the building as its headquarters by leasing the office space from Real Estate Holding Co. Company A will not contribute or sell to Real Estate Holding Co. portable walls, office equipment or furniture which is necessary to use the building for offices. Thus the lease will be a "bare bones lease" of the building to Company A with Company A responsible for equipping the building for office space or other use.

**BARE MULTIPURPOSE BUILDING**

Real Estate Holding Co. to Company A will be a "bare bones lease". It is anticipated that the highest and best use of the building will be for it to

building" as such a phrase is used in the real estate business, so the building could, with modifications, be used for different manufacturing purposes, and with modifications could be used for distribution, warehousing or subdivided into use for office space. Under the proposal, Real Estate Holding Co. will lease the land to Company A and

for the construction costs during the construction period by drawing on Company B's Note.

- 7. Real Estate Holding Co. will be a real estate holding company and will have no manufacturing or sales activity. It will not enter into agreements other than

the use of the land to be used in the production of

Since the financing provided by B is limited to the five year period, B will have an option to redeem 20% of the preferred stock each year after projected start-up with the anticipation that all preferred stock will be redeemed at the end of the fifth year following start-up. If B exercises its option to redeem, A will have a corresponding right to redeem 20% of its common stock each year for the five year period.

**BUSINESS REASONS**

*6/5/96 - Advised writer that even if notes (or cash) contributed to JV are limited to use in buying only exempt assets, such cash and notes must still be counted as an asset of the JV.*

The business reasons for the proposal for Company A are:

- a) Subprime financing rate on money provided to assist an expansion, using unproductive assets as security.
- b) Off balance sheet financing.

10. The business reasons for the proposal for Company B are:

- a) Additional production of needed product from A.
- b) Arms-length after-tax return on a mid-term financial investment.
- c) highly secured investment because the financing is supported by assets owned by a special financing company.

*5/31/96 - It is view of Premier Office that in favor of corporate JV, the notes contributed to the JV by the farmers must be counted as assets of JV. They are a proxy for cash and are counted as JV assets and do not qualify as "other obligation" under*