

801.1(b)(2); 801.1(c)(2)

This material is confidential under 7A(h) of the Release under Act.

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July 10, 1996

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BY HAND

Richard B. Smith, Esquire  
Premerger Notification Office  
Bureau of Competition, Room 303  
Federal Trade Commission  
Sixth St. and Pennsylvania Ave., N.W.  
Washington, D.C. 20580

SECRET  
PREMERGER NOTIFICATION  
OFFICE  
JUL 10 1 10 PM '96

Dear Dick:

This letter memorializes the advice you provided yesterday over the telephone concerning the appropriate analysis under the [REDACTED] and the implementing regulations, as to who controls a corporation under the following circumstances:

X is a not-for-profit corporation that has no voting securities. X is managed by a board of directors consisting of four natural persons, A, B, C, and D. A and B are husband and wife; C is a lawyer, among whose clients are A and B; and D is a third party who is president of the corporation. None of the directors has any contractual power to control the vote of any other director; each can vote as he or she deems fit, consistent with the fiduciary

X's by-laws provide that directors are elected at each annual meeting of directors by a plurality of the votes cast by the then-serving directors. Directors can be removed for cause by a majority vote of the directors. If a director resigns or is removed, a new director is selected by [REDACTED] of the remaining directors.

not controlled by A or B or any other person, and that X is therefore its own ultimate parent entity. You explained that because X has no voting securities, determining whether X is controlled by any other person depends upon whether any person

[REDACTED]

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July 10, 1996  
Page 2

has "the contractual power presently to designate 50% or more of

pertaining to "holdings" of spouses, would not apply in this context, and that C's status as an attorney to A and B should likewise be disregarded in the absence of any agreement binding C

the contractual right presently to designate 50% or more of the directors of Y. You concluded that Y is its own ultimate parent

If this letter does not accurately reflect the advice you provided, please call me as soon as possible.

Thank you for your time and assistance.

Very truly yours,

[REDACTED]

2 6 1 6 0 01-11-96 [initials]

Checking with two staff members of the FIN office, we were correct and X is its own UPE.

RBS Smith