

[REDACTED]

February 3, 1999

FEDERAL TRADE COMMISSION  
Room H-323, Drop H-301  
6th & Pennsylvania Avenue, N.W.  
Washington, DC 20580

Re: Reportability of Proposed Formation of 501(c)3  
Health Care Holding Company (See My Letters of  
June 16 and October 6, 1998 to You)

1999 FEB - 2 10 3 32  
FEDERAL TRADE  
COMMISSION  
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OFFICE

Dear Dick:

This is a request for confirmation that the transaction described herein is not reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. §18a ("HSR Act").

two hospitals, each of which is currently controlled by a

to appoint an equal number of all of Newco's corporate members as

the HSR Act and request your confirmation of their interpretation.

The parties to the proposed affiliation are Religious Order ("RO"), a nonprofit entity that is currently in a position to

which six individuals are religious sisters of RO and

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formed Newco all of their membership interests so that Newco will

bylaws, and dissolve, liquidate, or sell Newco.

Newco will also have a sixteen person Board of Trustees to direct Newco's business. The RO Corporate Members and the CB Corporate Members will each have the right to appoint six persons to the Board of Trustees. These twelve persons will select four additional persons to serve on this board. During the first three years, the President and Chief Executive Officer will be one of the CB Corporate Members and thereafter the Board will be expanded to seventeen persons and the President and Chief Executive Officer of Newco (appointed by the eight Corporate Members) will serve as the seventeenth Trustee on Newco's Board in an ex-officio capacity with full voting rights. To implement the proposed affiliation, Hospital A and Hospital B will each adopt new bylaws and/or amended certificates of incorporation that acknowledge that Newco is the sole corporate member of each of them.

In order to achieve "acquisition refunding" status under the Internal Revenue Code for the tax-exempt debt of RO and CB, the transaction will be structured, for tax purposes, as a "failed" tax-free reorganization under the Internal Revenue Code. This

Newco of Hospital A by RO (via the transfer of membership interest) and of Hospital B by CB (via the transfer of membership interest) as asset acquisitions pursuant to an Asset Control

Under the tax analysis, as consideration for the contributions of RO's and CB's membership interests in Hospital A

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and Hospital B, and thus control of the hospital assets of Hospital A and Hospital B: (a) Newco will assume liabilities for existing debt relating to the transferred hospitals which debt will be immediately defeased upon issuance of the tax exempt bonds; (b) RO and CB will each receive a 50 percent interest in Newco through the ability to appoint 50 percent of the Corporate Members of Newco; and (c) RO and CB will each receive from Newco \$100,000 in cash as "boot."

For at least two years after the date of the tax-exempt

and unrelated to Newco; and Hospital A and Hospital B would remain in existence as separate corporate entities under the control of Newco after the formation of Newco is consummated.

copies of which are attached) and the end result will be the same. We believe that the transaction, is not reportable under the HSR Act, and would appreciate confirmation of our conclusion.

Should you have any questions regarding this request or the

1/6/99 P.H.S. [REDACTED] Co. to. Since

Attachments as appraised by Newco, Newco can acquire one of the hospitals without reporting but its acquisition of the second hospital is potentially reportable since Newco has knowledge of the first acquisition. If Newco acquires the second hospital it must report for either the acquisition of Hospital A or B first and the subsequent acquisition of either A or B then a report must be made. Newco is