

(c)(4)
801.1(a)(2)

[REDACTED]

ATTORNEYS AT LAW

[REDACTED]

[REDACTED]

October 14, 1999

Nancy Ovuka, Esq.
Federal Trade Commission
6th Street & Pennsylvania Ave. N.W.
Washington, D.C. 20580

Dear Ms. Ovuka:

The purpose of this correspondence is to confirm our recent discussion concerning the status of a state retirement fund for HSR purposes.

Our client in this matter is the [REDACTED] the [REDACTED]

members appointed by the Governor of Texas and one member from and elected by the membership of each of the following: (i) the Board of Regents of the University of Texas

Trustees of the Teacher Retirement System of Texas; (iv) the Board of Trustees of the

Funds and may employ and retain staff, including an executive director. The boards of

respect to Fund II, there is the [REDACTED] 1998 Trust.

The governing boards of the Texas Permanent University Fund, Texas Permanent School Fund, Teacher Retirement System of Texas, Employee Retirement System of

[REDACTED]

[REDACTED]

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Based on our discussion, my understanding is that the Federal Trade Commission's
~~Proposed Notice of Proposed Rulemaking, 16 CFR 164.101 and 164.102, regarding the~~

801.1(a)(2). Accordingly, because they are excluded from such definition of "entity," I further understand that neither Fund I or Fund II, or the various trusts created with respect to Fund I and II, will be required to make filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, (the "HSR"), should their investments reach HSR size-of-person and size-of-transaction thresholds.

If you should disagree with the conclusions expressed above, please contact me as soon as possible. Thank you very much for your attention to this matter.

Sincerely yours,

A large black rectangular redaction covers the signature and name of the sender.

Enclosure

§ 20. Management investment of state funds

- (1) "Board of trustees" means the board of trustees of the Texas growth fund.
- (2) "Fund" means the Texas growth fund.

includes investments in new or small businesses, investments in businesses with rapid growth potential, or investments in applied research and organizational activities leading

trusts. The governing boards of the permanent university fund, the permanent school fund, the Teacher Retirement System of Texas, the Employees Retirement System of Texas, and any other pension system created under this constitution or by statute of this state in their sole discretion may make investments in the fund.

(e) The fund is managed by a board of trustees consisting of four public members appointed by the governor and one member from and elected by the membership of each of the following:

- (1) the Board of Regents of The University of Texas System;
- (2) the Board of Regents of The Texas A&M University System;
- (3) the Board of Trustees of the Teacher Retirement System of Texas;

odd-numbered year.

(e) A person filling an elected position on the board of trustees ceases to be a member of the board of trustees when the person ceases to be a member of the board the person

representatives. The governor shall designate a chairman from among the members of the board of trustees who serves a term of two years expiring February 1 of each odd-numbered year. A member may serve more than one term as chairman.

(2) The board of trustees shall manage the investment of the fund, and may:

- (1) employ and retain staff, including a chief executive officer;
- (2) analyze and structure investments;
- (3) set investment policy of the fund;

(4) take any action necessary for the creation, administration, and protection of the fund;

(5) enter into investment contracts with the participating funds or systems;

(6) adopt rules regarding the operation of the fund;

(7) pay expenses of the fund based on an assessment on investor contributions; and

(8) alternatively, or in combination with its own staff, contract for the management of investments under this section with a private investment management firm or with an

value the investments for determining the purchase or sales price of participating shares of investing funds or systems participating in the fund consistent with investment contracts. Evidence of investment in the fund shall be held by the state treasurer in

cost value of the investing fund or system, as determined at the end of each fiscal year.

(j) The board of trustees shall establish criteria for the investment of not more than 10 percent of the fund in venture capital investments. Not more than 25 percent of the funds available for venture capital investments may be used for unilateral investment. Investments of the remainder of the funds available for venture capital investments must be matched at least equally by funds from sources other than the fund, with matching amounts established by the board of trustees. The board of trustees shall also establish

proportion to the number of participating shares of each investing system. Capital appreciation becomes a part of the corpus of the fund and shall be distributed in accordance with the investment contracts.

(k) The board of trustees shall make arrangements to begin liquidation phase out investments, and receive the principal and capital gains on investments to the investors in the fund not later than the 10th anniversary of the date of the adoption of this section. Except under unusual circumstances where it may be necessary to protect investments previously made, further investments may not be made in or by the fund after the 10th anniversary of the date of the adoption of this section.

(l) At the regular legislative session next preceding the 10th anniversary of the date of the adoption of this section, the legislature, by two-thirds vote of each house, may authorize the creation of Texas growth fund II, which shall operate under this section and under the board of trustees created by this section in the same manner as the Texas growth fund. Funds in Texas growth fund II may not be commingled with funds in the Texas growth fund.

(m) The board of trustees may purchase liability insurance for the coverage of the trustees, employees, and agents of the board.

(n) The legislature shall provide by law for the periodic review of the board of trustees in the same manner and at the same intervals as it provides for review of other state agencies, except that the legislature shall provide that the board of trustees is not subject to abolishment as part of the review process.

(o) This section expires September 1, 1998, except that if the legislature authorizes the creation of Texas growth fund II, as provided by Subsection (l) of this section, this section expires September 1, 2008.

(p) This section is self-executing and takes effect on its adoption by the voters. All state officials named in this section shall take the necessary actions for the implementation of this section. The legislature shall provide by law for full disclosure of all details concerning investments authorized by this section.

(q) The board of trustees may not invest money from the Texas growth fund in a business unless the business has submitted to the board of trustees an affidavit disclosing whether the business has any direct financial investment in or with South Africa or Namibia.

Historical Notes

This section was adopted in 1988 as proposed by Act 1987, 70th Leg., 1st Sess., ch. 100, § 1.