

e01.1(b)

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, October 20, 2010 10:20 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Premerger Notification Analysis
Attachments: email to ftc.doc

Dear Mr. Verne,

As a follow up to the voicemail I left for you today, we are providing this summary of our premerger analysis regarding a transaction where we are counsel for Target. We have prepared this summary below (also attached as a document) with the assistance of Company's counsel and we are seeking your confirmation that no Premerger Notification Form is required based on these facts.

Thank you for your assistance. We look forward to hearing from you.

Description of Transaction

Company and Target are unaffiliated non-stock corporations that are tax exempt. The companies desire to enter into a transaction under which Company will become the sole member of Target and Target will be consolidated into Company's financial statements. Target will retain its own Board of Directors (Target's corporate documents refer to Board of Trustees).

Analysis

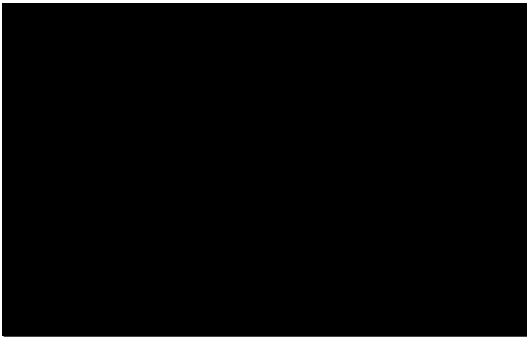
Because non-stock acquisitions of corporations are purely asset transactions, the only applicable control test is set forth in 16 C.F.R. § 801.1(b)(2), pertaining to contractual power to appoint directors. As a result, the issue is whether Company's ability to approve board candidates nominated by Target and remove Target's directors gives Company the power to "presently designate 50 percent or more of the directors" and thus control Target.

Based on the FTC's previous guidance and interpretations, the control test is not satisfied. We rely on the control test in 16 C.F.R. § 801.1(b)(2), under which Company must actually have the ability to designate 50% or more of Target's directors, without the concurrence of Target. See <http://www.ftc.gov/bc/hsr/informal/opinions/0103001.htm>.

The parties' Letter of Intent provides that Target's Board of Directors will initially consist of its nine current directors, plus two or three directors chosen by Company's Board of Directors. After this initial construction of Target's board, Target will have twelve directors, nine of whom are nominated by Target's board and appointed subject to Company's approval. Specifically, a nominating committee of Target's board will select candidates for consideration as Target's directors based on criteria and characteristics (i.e. skills, experience, constituency) determined by Company with input from Target's board. After Target's board approves candidates, a nominating committee of Company's board will consider the candidates and recommend them to Company's board for approval. If Company's board does not approve a candidate, Target's board will nominate another candidate and the process will repeat until Company approves Target's nominated directors. Company's board may remove directors from Target's board based on specified criteria. However, Company may not appoint a replacement to fill one of Target's nine director positions without Target's prior nomination.

Based on this structure, Company may only appoint 33% of the directors (up to three of twelve) independently. Company must have Target's prior approval to appoint the remaining nine directors to Target's board. Thus, Company will not satisfy the control test set forth in 16 C.F.R. § 801.1(b)(2).

If you agree with our analysis, please confirm that Company and Target are not required to file the Premerger Notification Form. Thank you.



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AGREE
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