

FOIA (b)(7) where a person owns, controls or a non-profit entity without U/S
by the power to appoint the directors, a subsequent merger of the non-profit
with another subsidiary within the person is exempt
under FOIA (b)(7) of the rules + not under FO 2.30

This material may be subject to
the confidentiality provision of
Section 7A (h) of the Clayton Act
which restricts release under the
Freedom of Information Act

April 23, 1991

[Redacted]

Victor Cohen, Esq.
Premerger Notification Office
Federal Trade Commission, Room 303
Sixth Street and Pennsylvania Ave. N.W.
Washington, D.C. 20580

VIA FEDERAL EXPRESS

Dear Mr. Cohen:

This letter serves to confirm our telephone conversation of April 22, 1991.
During that conversation, you, [Redacted] and I discussed the potential reportability
under Section 7A of the Clayton Act (the "Act") of two proposed corporate transactions.
With respect to the first proposed transaction, we discussed the following facts:

In 1986, nonprofit corporation A and nonprofit corporation B decided
to combine their operations. The manner in which they proposed to do so was
by establishing a for-profit management company, C, the voting securities of
which would be owned equally by A and B. The directors of C were to be
the voting "members" of A and B, with the authority to elect the directors of
A and B.

On December 18, 1986, A and B filed their respective Notification and
Report Forms under the Act with respect to the above-described transaction.
Acting on informal guidance from the Premerger Office, each of A and B filed
both as an acquiring and as an acquired person, and they characterized the
transaction as a consolidation within the meaning of 16 C.F.R. § 801.2. On
December 30, 1986, early termination of the statutory waiting period was
granted.

In early 1987, C was incorporated and the combination of A and B was
effected. To satisfy state regulatory concerns, the mechanism of the
consolidation was altered slightly. While each of A and B owns 50% of C's
voting securities, C's control over A and B is effected through common

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A/B

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directors. The bylaws of A and B provide that all directors of C, plus C's chief executive officer, must hold seats on the respective boards of A and B. C's representatives were installed on the boards of A and B in 1987, and they have constituted a majority since then. The boards of A and B are self-perpetuating.

To simplify the corporate structure, C now wishes to effect a statutory merger of B into A.

Based upon the foregoing facts and our discussion with you about them, it is my understanding that the Premerger Office does not consider the proposed merger of B into A to be a reportable transaction. The premise of the 1986 filing was that the combination of A and B through the medium of C was tantamount to a consolidation and therefore to an acquisition of voting securities. Accordingly, the statutory merger of B into A would fall within the intraperson exemption of 16 C.F.R. § 802.30.

NO -
under 802.1(c)
(6)

The facts we discussed concerning the second proposed transaction are the following:

In late 1987, C acquired control of nonprofit corporation D by gaining the right to choose the "members" of D who elect D's directors. C's board of directors exercised this right by appointing themselves as the members of D, and in their capacity as the members of D, they then elected themselves as the directors of D.

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(1987)

Although this transaction appears to have been tantamount to an acquisition of voting securities, it was not reported under the Act, because it did not meet the size-of-transaction test set out in § 7A(a)(3) of the Act, as qualified by 16 C.F.R. § 802.20.

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C now wishes to effect the merger of D into A.

Based upon the foregoing facts and our discussion with you, it is my understanding that the Premerger Office does not consider the merger of D into A to be a reportable transaction. C's present position with respect to both A and D is equivalent to the ownership of their respective "voting securities." As a consequence, the merger of D into A would constitute an intraperson transaction under 16 C.F.R. § 802.30.

If this letter does not correctly reflect our conversation or mischaracterizes the views of the Premerger Office, please contact me as soon as possible. Unless I hear from

NO -
Held
VLS
under
1991
view

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you to the contrary, I will continue to advise C and its affiliates in accordance with the analysis set forth above. Thank you for your consideration.

Sincerely yours

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[REDACTED]

[REDACTED]

A
C