

801.21
Title is not passed
requiring only (right to receive interest)

[REDACTED]

[REDACTED]

[REDACTED]

able 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

December 10, 1991

DEC 10 11 35 AM '91
FEDERAL TRADE COMMISSION

Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Room 303
Washington, D.C. 20580
Attention: Ms. Nancy Ovuka
Compliance Specialist
FAX: (202) 326-2050

Re: Advice Concerning Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act")

Dear Ms. Ovuka:

This letter is to request advice regarding the position of the Federal Trade Commission ("FTC") with respect to the proposed acquisition of the beneficial interest in each of two trusts established in connection with leveraged sale-leaseback transactions.

Our client, [REDACTED] (the "Lessee"), is the lessee under eleven separate leveraged sale-leaseback transactions (the "Transactions") aggregating a 10.2% undivided interest in the [REDACTED] and certain common facilities (collectively, the "Leased Assets"). Each Transaction has a substantially identical structure: title to the leased undivided interest in the Leased Assets is held by a trustee (the "Trustee") which holds such title in a trust (the "Trust") for the benefit of a single institutional investor (the "Beneficiary"). The Trusts purchased the Leased Assets from the Lessee as part of the Transactions. The Beneficiaries receive the [REDACTED]

[REDACTED]

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income stream generated by the lease payments to the Trust after payment of debt service on the non-recourse debt which financed 70% to 80% of the original purchase price. The Lessee, through its operating agent, [REDACTED] controls the Leased Assets to the exclusion of the Trustee and the Beneficiaries.

The terms of the Transactions are typical of facility sale-leaseback transactions. In particular, the Trustee holds title to the Leased Assets and performs certain essentially ministerial functions with respect to the Trusts and has specified duties to the Beneficiaries. The Trustee is not, however, responsible for operating the Leased Assets and does not otherwise serve a policy-making function with respect to the Leased Assets. Indeed, in its order authorizing the Transactions, the Nuclear Regulatory Commission confirmed that the Lessee would remain the sole licensee with respect to the Leased Assets and expressly conditioned its authorization as follows:

This conclusion is subject to the condition that the lessor and anyone else who may acquire an interest under the transaction which is the subject of this application are prohibited from exercising directly or indirectly any control over the licensees of the [REDACTED] nuclear facility.

The Lessee proposes to acquire the beneficial interests in two of the eleven transactions (the "Beneficial Interests"). The Beneficial Interests are presently owned indirectly by [REDACTED] which is bankrupt and is in the process of liquidating its entire investment portfolio (including the Beneficial Interests).

Enclosed are copies of two letters, one dated December 11, 1990 and the other dated March 18, 1991 (a follow-up request), addressed to Mr. Patrick Sharp of the staff of the FTC, in which the author seeks advice from the staff with respect to a purchase transaction which is, in all relevant respects, the same as the purchase the Lessee proposes to make. The December 11, 1990 letter recites that:

[Mr. Sharp] advised [the author] that [Mr. Sharp] agreed with [the author's] analysis that the acquisition of the beneficial interests of the Trust would not be subject to the reporting requirements of the Act. [Mr. Sharp] indicated that the analysis conforms with that of a standard leveraged sale-leaseback transaction in which the

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sale of the beneficial interest is in substance only the transfer of an income stream, which is neither a voting security nor asset under the Act.

We are similarly of the view that the proposed purchase transaction should not be subject to the reporting requirements of the Act on the rationale said to have been expressed by Mr. Sharp.

The parties would like to close the initial step in the proposed transaction as promptly as reasonably practicable. Accordingly, we would appreciate hearing from you in the near future whether or not the staff concurs with our view as to the inapplicability of the reporting requirements of the Act to the proposed purchase transaction. If you have any questions or if you need any further information, please do not hesitate to call me at [REDACTED]

Sincerely,

[REDACTED SIGNATURE]

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[REDACTED]