

801.21

NO

[REDACTED]

[REDACTED]

[REDACTED]

December 16, 1991

[REDACTED]

BY MESSENGER

Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Room 303
Washington, D.C. 20580
Attention: Ms. Nancy Ovuka
Compliance Specialist

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

Dear Ms. Ovuka:

This letter is intended to request informal advice concerning the Commission staff's position on whether a Hart-Scott-Rodino Act ("HSR") premerger notification filing would be required in the acquisition of the beneficial interest in a trust established in a prior leveraged sale-leaseback transaction.

Our client, [REDACTED] is the lessee under a typical leveraged sale-leaseback transaction involving eight [REDACTED]. Title to the [REDACTED] is held by a trustee, which holds the title in trust for the benefit of [REDACTED], an affiliate of [REDACTED], which is in bankruptcy and is liquidating its entire investment portfolio, including its beneficial interest in the trust. The trust purchased the [REDACTED] pursuant to an assignment of purchase rights by [REDACTED]. Subsequent to the purchase, [REDACTED] acquired the original notes issued by the trustee in connection with the purchase in exchange for new [REDACTED] notes containing different payment terms. As a result, the lease payments made by [REDACTED] to the trustee are in turn remitted back to [REDACTED] which in effect uses the same funds to make payments under the new notes. [REDACTED] receives the income stream generated by the lease payments after payment of the non-recourse debt. The trustee holds title to the [REDACTED] and performs certain ministerial functions for the trust and the beneficiaries. However, the lessee [REDACTED] operates

[REDACTED]

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the leased assets. [REDACTED] now proposes to acquire the beneficial interests of [REDACTED]

We understand that in other similarly structured transactions, the Commission staff has taken the position that no HSR premerger notification filing is required. That position is reflected in the enclosed letters dated December 10, 1991, from [REDACTED]

[REDACTED] As we understand the staff's position, it regards this proposed transaction as a standard leveraged sale-leaseback transaction in which the sale of the beneficial interest to the lessee is only the transfer of an income stream, which is neither a voting security nor an asset for purposes of HSR. We believe that the same analysis applies to the [REDACTED] transaction described above.

The parties are anxious to close this transaction as soon as possible, but in no event later than the end of the year. As a result, we would appreciate hearing whether the staff concurs in our views concerning the application of the HSR reporting obligations to this transaction. If you have any questions, please call me [REDACTED] or my partners,
[REDACTED]

Sincerely,
[REDACTED]

Enclosures
[REDACTED]

Title (and other indicia of beneficial ownership) will remain w/ trust. Only cash equivalent (right to receive income stream) is being purchased. Payment for such is excluded from size-of-transaction pursuant to 801.21.