

801.40
801.11
801.1(c)
802.71

March 25, 1992

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FEDERAL TRADE COMMISSION
PRE-MERGER NOTIFICATION
OFFICE

Mr. Patrick Sharpe
Compliance Specialist
Pre-Merger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Sixth Street and Pennsylvania Avenue
Washington, D. C. 20580

VIA FACSIMILE

Dear Patrick:

This letter will summarize our telephone conversation this afternoon. In that conversation I told you about a proposed transaction involving the purchase and sale of a shopping center (the "Property") located in the [redacted]. At the present time, the Property is owned by a limited partnership.

Upon consummation of the contemplated transaction, a newly formed Delaware corporation (the "Acquiring Corporation") will have acquired the Property. The Acquiring Corporation will have only two shareholders. One shareholder, which will own less than 50% of the shares in the Acquiring Corporation, will be a corporate pension plan. The other shareholder, which will own more than 50% of the shares in the Acquiring Corporation, will be a revocable group trust (the "Group Trust") with eleven beneficiaries, each of which is either a corporate pension plan or a government retirement system. The beneficiaries of the Group Trust have the unrestricted power to veto any replacement trustees selected by the other trustees. No one beneficiary of the Group Trust owns or controls more than 49% of the total corpus of the Group Trust. No beneficiary of the Group Trust controls any other beneficiary of the Group Trust. No beneficiary of the Group Trust is affiliated with the limited partnership which currently owns the Property.

Also
Settle
All are
unrelate
pension
funds, etc

FTN office

wrong In our telephone conversation today, the conclusion was reached that the department would look to the Group Trust, as majority shareholder, for reporting purposes. However, because the Group Trust is a revocable trust, the department would look through that entity to its beneficiaries as ultimate parent entities.

Settlers

[REDACTED]

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Because each beneficiary of the Group Trust is a "\$100 million" person within the criteria established under the Act, the "size of the person" test will be met in the proposed transaction.

We next addressed the "size of transaction" test. In that context, I read to you over the telephone excerpts from a letter which I had written to you on June 18, 1990 with respect to an unrelated transaction. A copy of that letter is enclosed herewith. To refresh your recollection, the enclosed letter was written to you very shortly after a series of telephone conversations between us in which you confirmed for me the conclusions reached.

I would appreciate it if you would review the enclosed letter and then call me to discuss the applicability of the conclusions therein contained to the proposed transaction described in this letter.

Thank you very much.

Very truly yours,

[REDACTED]

Must look at Section 301.40.
Does it apply?
who controls the newly formed
Company? It is its own UPE since
the v/s in the Revocable Trust
are attributed back to the
settlers in accordance with their
contributions to the Trust.
consequently, Section 301.11(e)
applies. In this case, Mr. [REDACTED]
concluded that the acrg. person
will not meet the size of
person test pursuant to 301.11(e).

called Mr. [REDACTED]
3/27-92