

802.30; 801.1(g)(1)

DIAL DIRECT

October 27, 1992

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Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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FEDERAL TRADE
COMMISSION
PREMERGER
NOTIFICATION

Dear Dick:

I spoke to you today concerning the availability of the exemption provided by Section 802.30 of the Premerger Notification Rules in a situation where certificated membership interests in a non-profit corporation are held by the control persons. The following is a description of the proposed transaction:

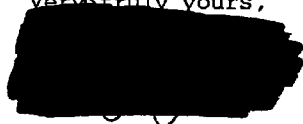
Individual X and his spouse Y hold 80% of all of the outstanding voting securities of Corporation A. Corporation A proposes to merge with Corporation B in a transaction in which Corporation B will be the surviving corporation. Individual X and his spouse Y hold 30% of the outstanding voting securities of Corporation B directly. Individual X and his spouse Y also hold 50% of the outstanding membership interests in a non-profit corporation organized under the laws of the [redacted] which non-profit corporation (Corporation C) owns 25% of the outstanding voting securities of Corporation B. No other person holds 50% or more of the membership interests in Corporation C and no person other than Individual X together with his spouse Y holds 50% of the outstanding voting securities of Corporation B. The membership interests in Corporation C entitle the holders to vote for the election of the directors of Corporation C, are represented by certificates, are transferable in accordance with the Corporation's By-Laws, and meetings of the members are held pursuant to notice requirements and conducted in accordance with quorum requirements. Corporation C has four members at present.

In view of the fact that Individual X together with his spouse Y holds 80% of the outstanding voting securities of Corporation A and 55% of the outstanding voting securities of

Corporation B (30% directly and 25% by holding 50% of the voting securities of Corporation C), it is my opinion that the exemption provided by Section 802.30 applies to the aforescribed transaction. Interpretation 64 set forth in the ABA Premerger Notification Practice Manual is distinguishable since the situation presented there involved a single member public benefit corporation where the member "elect[s] the corporation's board of directors, even though technically they do not hold voting securities issued by the corporation." In the present instance, the members do hold certificated voting securities that enable them to elect Corporation C's board of directors and the membership interests carry all the indicia of voting securities in a for profit corporation.

Please call me, collect if you wish, at the number listed above once you have had a chance to review this request for advice. I appreciate your attention to this matter.

Very truly yours,



10/30/92 Advised that under Sec. 617.011 of newly revised Non-Profit Corporation Act and non-profit corporation C's by-laws, it was the Premerger Officer's conclusion that X and Y held "voting stock" in C and, as such, controlled both B and A through the holding of voting securities. As a result, 802.30 could be used to exempt the merger of B and A.

PTB Smith