801.1(c)
801.[redacted]

July 14, 1993

BY FAX

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Premerger Notification Office
Federal Trade Commission
Room 303
Sixth Street & Pennsylvania Avenue, N.W.
Washington, DC 20580

Fax No.: (202) 326-2050

Dear Ms. Ovuka:

As we discussed by telephone yesterday, I would like to receive your guidance regarding which person is required to file a Premerger Notification and Report Form as an acquired person in connection with a sale of fixed assets (the "Assets") that are leased by one person to another pursuant to a relatively complex contractual relationship.

The lessor of the Assets is an [redacted]. The Assets are leased to a [redacted] The person of which the [redacted] is a part is controlled by the controlling shareholder (the "Parent") of the [redacted] The [redacted] and the [redacted] have entered into a letter of intent to sell the Assets, together with related inventory and accounts receivable (which are owned by the [redacted], to a third party. I would like your guidance on whether the acquired person for purposes of the Hart-Scott-Rodino Antitrust Improvements Act is the [redacted] the [redacted] or both of them.

The relationship between the [redacted] and th[redacted] is set forth in an Integrated Agreement (the "Agreement"), consisting of four sections: [redacted] under the marketing section of the [redacted] the [redacted] sells its member-produced crops exclusively to the [redacted] The [redacted] must pay the [redacted] at least the [redacted] as defined in the [redacted] of the [redacted] plus a share of the earnings generated from these [redacted]

[redacted]

Under the facilities financing section of the Agreement, the [redacted] purchases the fixed assets and one-half of the intangible assets used by the [redacted] in its business and leases them to the [redacted] The [redacted] pays all taxes, insurance, maintenance, and other operating costs of the leased facilities and pays annual rent to the [redacted] equal to the annual amortization taken on the leased fixed and intangible assets. The [redacted] also pays interest equal to the cost of funds used by the [redacted] for the financing of assets leased to the [redacted] The [redacted] is required to repair or replace any leased assets that are damaged or destroyed. The lease arrangement is accounted for as a capitalized lease, and the leased assets are depreciated by the [redacted] for both tax and financial reporting purposes. The Assets represent a portion of the fixed assets leased by the [redacted]o the [redacted]

The operations financing section of the Agreement provides that the [redacted] will lend to the [redacted] all funds not required for its own operations or for purchases of assets to be leased to the [redacted] Funds borrowed by the [redacted] and re-lent to the [redacted] bear the same conditions and interest rates as the [redacted] has obtained from its lenders. [redacted]rovisions of the Agreement do, however, allow the [redacted] with sufficient notice to the [redacted] to accelerate the repayment of outstanding debt. As additional consideration for the fixed assets and funds provided by the [redacted] to the [redacted] the [redacted] shares in the profits of the [redacted]

The [redacted] and the [redacted] operate from common offices and all operations of the [redacted] are managed by the [redacted] under the policy direction of the [redacted] Board of Directors. The management section of the Agreement provides that the [redacted] with the concurrence of the [redacted] Board of Directors, shall select the principal executive officer of the [redacted] who is designated as the General Manager. While the management section does not so require, the General Manager of the [redacted] has been an executive officer of the [redacted] since the [redacted] was formed. The [redacted] has no employees of its own.

The Agreement extends to June, 1997, and provides for two successive renewals, each for a term of five years, at the option of the [redacted] The [redacted] has the option of terminating the Agreement at any time by purchasing all assets leased from the [redacted] at book value. Should the Agreement be terminated and the [redacted] not buy the assets of the [redacted] then the [redacted]st sell to the [redacted]ll trademarks, brand names and other intangible assets of the [redacted] at their then existing book value.

not useful life

yes! all intangible assets, but not equipment

no credit for leased payments already made

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BEACH &
WILCOX

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If you require any further information in order to provide the guidance requested by this letter, please feel free to call me at [redacted] Thank you for your assistance in this matter.

Very truly yours,

[redacted]

[redacted]

7/14/93

Despite the fact that the leased assets are carried on the books of the lessee ([redacted]) (p. 2 ¶1), beneficial owership of the assets remains with the lessor ([redacted]). The [redacted] can buy the assets for book value. The [redacted] can purchase the intangible assets – it already holds the fixed assets (p. 2 ¶4). The [redacted] is the UPE for the fixed assets. The [redacted] owns the inventory and accounts receivable. Therefore, there are two separate transactions involved.

nmo (RS concurs)