

801.40
802.40

[REDACTED]

March 8, 1994

Via Telecopy and U.S. Mail

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

This material may be subject to the confidentiality provisions of Section 7A(h) of the Clayton Act which restricts release under the Freedom of Information Act.

Re: Application of Hart-Scott-Rodino Antitrust Improvements Act of 1976 to the Formation of Not-For-Profit Corporations

Dear Mr. Rubenstein:

The purpose of this letter is to confirm the oral advice you gave me concerning the applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") and the regulations promulgated thereunder to the formation of not-for-profit corporations. You told me that the FTC's position is that the formation of a not-for-profit corporation cannot fall under the Act's joint venture provisions because corporate memberships are not considered to be voting securities. This is the FTC's position with respect to the formation of all not-for-profit corporations, despite the wording of 16 C.F.R. §802.40 limiting that exemption to the acquisition of "voting securities" of tax exempt not-for-profit corporations.

Please call me at [REDACTED] if you do not agree with my restatement of your oral advice.

Very truly yours,

[REDACTED]