

see letter of 11-09-94

801.1 (b)  
801.1 (f)

[REDACTED]

November 21, 1994

Victor L. Cohen, Esq.  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
Washington, D.C. 20580

NOV 21 2 03 PM '94  
PREMERGER NOTIFICATION  
FEDERAL TRADE COMMISSION

Re: Premerger Notification — Not-for-Profit Affiliation

Dear Mr. Cohen:

This letter confirms your phone call last week in which you told me that the staff has reconsidered its earlier guidance regarding whether an affiliation between not-for-profit health care organizations structured as described in my November 9, 1994 letter to you would include a reportable transaction under Section 7A of the Clayton Act, 15 U.S.C. § 18A, and the regulations promulgated thereunder, 16 C.F.R. Subchapter H. The staff had initially determined that such an affiliation would not contain a reportable transaction because Foundation — the “acquired” person — will use a staggered board structure that will give Medical Center — the “acquiring” person — the contractual power to designate less than 50% of Foundation’s directors in any one year, though Medical Center would have the contractual power to designate more than 80% of Foundation’s directors in all years.

Upon further reflection, the staff has concluded that such an affiliation *would* include a reportable transaction (assuming size of person and size of transaction tests are satisfied). You told me that the staff no longer considers Foundation’s use of a staggered board to mean that the Medical Center will not acquire control of Foundation. In all other respects, you reconfirmed the staff’s original guidance as set out in my November 9 letter.

Accordingly, the response to question 2 in my November 9 letter — “Will the reorganization of Foundation result in a reportable acquisition by Medical Center?” — is now, “Yes, if the transaction otherwise meets the reporting requirements.” The staff’s analysis for this result is the same as set out in my November 9 letter *except* that the last italicized point is corrected as follows:

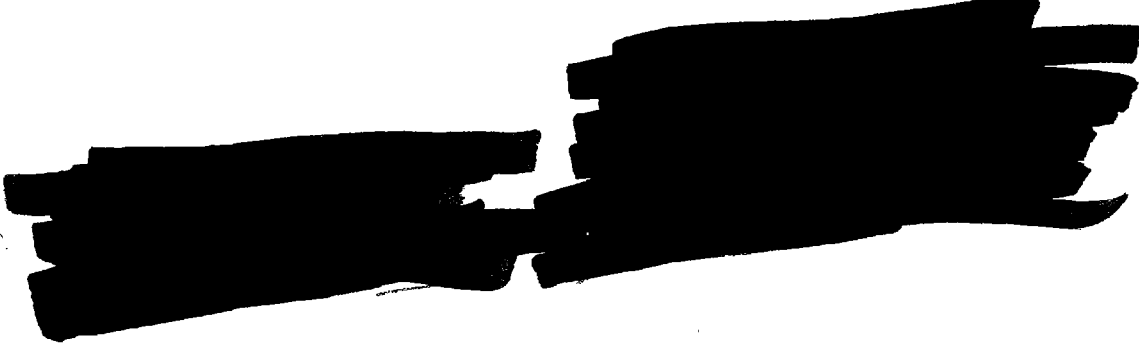
Victor L. Cohen, Esq.

November 21, 1994

Page 2

*The proposed affiliation will result in Medical Center acquiring control of Foundation for reporting purposes because Medical Center will have the power to designate at least 50% of the Foundation directors, notwithstanding that Foundation will use a staggered board of directors.* After reconsideration, the staff has concluded that the fact that Medical Center will have the contractual power to designate 26 of the 30 Foundation directors, or 86.7%, in *all* years (not counting the 4 ex-officio directors that will be appointed annually by the other Foundation directors) will give Medical Center control of Foundation. This will be the case, even though Foundation's use of a staggered board will mean that, in any *one* year, Medical Center will be exercising its contractual power directly and indirectly to designate only 10 of the 30 Foundation directors.

Once again, we appreciate your guidance on this matter. As before, please let us know immediately if we have misconstrued the staff's views on this situation.

A large, irregular black redaction covers the bottom half of the page, obscuring several lines of text. The redaction consists of several thick, horizontal black bars of varying lengths and positions, completely covering the underlying text.