

802,2.
801.199X

[REDACTED]

May 10, 1996

VIA FACSIMILE

Mr. Patrick Sharpe
Compliance Specialist
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

[REDACTED]

Dear Mr. Sharpe:

I am writing to confirm our conversation yesterday wherein we discussed the following transaction.

We represent [REDACTED] which has entered into an agreement to acquire voting common and non-voting preferred stock of [REDACTED]. Presently, 100% of the voting securities of [REDACTED] are owned by the [REDACTED]. Pursuant to the agreement, at the end of a multi-step transaction, the capital structure [REDACTED] will be as follows:

[REDACTED]

The [REDACTED] Living Trust will be retaining, not acquiring these shares.

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

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The purchase price of the voting common stock and of the non-voting preferred stock is based upon the economics of the transaction and tax considerations of the sellers. It is the only basis upon which the sellers were willing to enter into the transaction.

We have concluded that based upon an application of Section 801.10(a)(2)(i) and 802.20(b) of the Rules promulgated pursuant to Section 7A(d) of the Clayton Act, 15 U.S.C. 18A(d) (the "Act"), the above transaction is not reportable by [REDACTED]. This remains true, in our view, even if subsequent to the transaction, an entity other than the parties thereto, might assign a different value to the two classes of securities.

The purchase price allocation was determined without any reference to the parties' obligations under the Act. Indeed, our client is prepared and would prefer to file notification under the Act with respect to this transaction but understands the Premerger Notification Office will not accept a filing which does not meet the jurisdictional requirements of the Act.

I would appreciate upon review of this letter, your giving me a call and confirming your advice to me yesterday that you concur in our determination that the transaction is not reportable by [REDACTED]. I would also appreciate hearing from you as soon as possible, since if the transaction must be reported, [REDACTED] must do so immediately, in order to meet the closing date condition contained in the purchase agreement.

Very truly yours

[REDACTED]

[REDACTED] Based on all of the facts, you have made the determination that it is not reportable. (Assuming the size-of-person test is met). I concur that this transaction is exempt by [REDACTED] under Section 802.20(b) based on the chart on page 1 that shows a purchase price of \$525,000 for 37.5% of the V/S and this is not an avoidance device.

[REDACTED]

[REDACTED]

801.40; 7A(c)(2); 802.4

May 15, 1996

**PROPOSED REAL ESTATE HOLDING COMPANY
SUPPORTED BY BARE BONES BUILDING LEASES**

FACTS

1. Company A is a manufacturer of finished products.
2. Company B is a purchaser of A's products and desires to provide financing that would generate more after-tax cash return than a loan and will facilitate constructing a bare bones multi-purpose building that it is anticipated would be leased to A and, after equipping by A, would be used by A to produce more products for B and B's customers. A would not be contractually required to equip and use the multi-purpose building as a manufacturing facility, but A and B have signed a long-term supply agreement, for which A requires additional capacity.
3. Company A owns substantial industrial development bonds and real estate investments that it desires to use to (i) generate cash without recording debt on its balance sheet; (ii) obtain the cash at borrowing rates lower than its current interest costs; and (iii) finance a multi-purpose building.

ASSET BACKED FINANCING PROPOSAL

4. Company A will form a real estate holding company ("Real Estate Holding Co."). Company A will transfer to Real Estate Holding Co. certain land, valued at approximately \$1 million, on which the new multi-purpose building is proposed to be built by Real Estate Holding Co.. The land is vacant and adjacent to a Company A manufacturing facility which is not part of the transaction. The land is presently not income producing and has not generated any revenues during the preceding 36 months.

Company B has agreed to contribute \$100,000,000 in a demand note to Real Estate Holding Co.. At the same time as Company B's contribution, Company A would contribute a demand note and industrial revenue bonds to Real Estate Holding Co. with a value, when combined with that of the land, of \$400,000,000. In return for their contributions, Company B would receive voting preferred stock with a stated value and fair market value of \$100,000,000 and 20% voting rights, and Company A would retain common stock with a stated value and fair market value of \$400,000,000 and 80% voting rights. The preferred stock to be received by Company B would have a preferred right to fixed dividends on a semi-annual basis.

As construction proceeds on the multi-purpose building, Real Estate Holding Company would demand payment of portions of Company B's Note. In addition, a demand will be made immediately for payment of \$40 million of Company B's Note in order to enable Real Estate Holding Company to purchase a headquarters office building from Company A.

The following is Real Estate Holding Co.'s pro forma initial balance sheet:

Assets		Liabilities	
Land	\$1,000,000	Debt	\$ 0
Company B Note	\$100,000,000	Preferred Equity	\$100,000,000
		Common Equity	\$400,000,000
Industrial Revenue Bonds (currently owned by A)	\$300,000,000		
Company A Note	\$ 99,000,000		
	<u>\$500,000,000</u>		<u>\$500,000,000</u>

5. Real Estate Holding Co. will lease the bare buildings (Company A's headquarters building and the multi-purpose building to be built) and land to Company A. The rental of the land and buildings and interest on the industrial revenue bonds and Company A's Note are anticipated to be sufficient to pay preferred dividends to Company B.
6. Company A will exercise sole control over the operation of any businesses carried out in the leased buildings. Both leases will be "bare bones" leases with the lessee responsible for installation of partitions and equipment needed to make the bare buildings useable as office space, manufacturing or other use. The following is added information about the two buildings:

BARE HEADQUARTERS OFFICE BUILDING. The office building is 6 years old and during the six years it has been used by Company A for its headquarters' office space. Company A currently plans to continue to use the building as its headquarters by leasing the office space from Real Estate Holding Co. Company A will not contribute or sell to Real Estate Holding Co. portable walls, office equipment or furniture which is necessary to use the building for offices. Thus the lease will be a "bare bones lease" of the building to Company A with Company A responsible for equipping the building for office space or other use.

BARE MULTI-PURPOSE BUILDING. The building proposed to be built by Real Estate Holding Co. will be a "bare bones" building and the lease by

Real Estate Holding Co. to Company A will be a "bare bones lease". It is anticipated that the highest and best use of the building will be for it to be equipped and outfitted by Company A to be used in the production of Company A's products; however, this will not be a "special purpose building" as such a phrase is used in the real estate business, so the building could, with modifications, be used for different manufacturing purposes, and with modifications could be used for distribution, warehousing or subdivided into use for office space. Under the proposal, Real Estate Holding Co. will lease the land to Company A and build and lease the bare bones of the building to Company A. Company A will lease the land and bare building and will decide on the internal use of the building and will be solely responsible for equipping the building. It is anticipated that the building will be placed in service 12 to 24 months after Company B's initial investment. Real Estate Holding Co. will pay for the construction costs during the construction period by drawing on Company B's Note.

- 7. Real Estate Holding Co. will be a real estate holding company and will have no manufacturing or sales activity. It will not enter into agreements other than those necessary for the financing, investment and possible sale/leaseback of its assets. Real Estate Holding Co. will not equip and determine the use of the buildings, other than contracting and reviewing the use to be sure the use will not cause damage beyond ordinary wear and tear.

Since the financing provided by B is intended for the construction and start-up period, B will have an option to redeem 20% of the preferred stock each year after projected start-up with the anticipation that all preferred stock will be redeemed at the end of the fifth year following start-up. If B exercises its option to redeem, A will have a corresponding right to redeem 20% of its common stock each year for the five year period.

BUSINESS REASONS

- 9. The business reasons for the proposal for Company A are:
 - a) Subprime financing rate on money provided to assist an expansion, using unproductive assets as security.
 - b) Off balance sheet financing.
- 10. The business reasons for the proposal for Company B are:
 - a) Additional production of needed product from A.
 - b) Arms-length after-tax return on a mid-term financial investment.
 - c) highly secured investment because the financing is supported by assets owned by a special financing company.

6/5/96 - Advised writer that even if notes (or cash) contributed to JV are limited to use in buying only exempt assets, such cash and notes must still be counted as an asset of the JV under 801.40 (C)(1) RBB

5/31/96 - It is view of Premier Office that in favor of corporate JV, the notes contributed to the JV by the Farmers must be counted as assets of JV. They are a proxy for cash and are counted as JV assets and do not qualify as "other obligation" under