

801.40 ; 802.40 ; 802.20 ; 801.1(a)(2) ; 7A(c)(4) ; 7A(a)



May 22, 1996

Mr. Richard Smith  
Premerger Notification Office  
Federal Trade Commission  
Washington, D.C.

Re: Application of Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act")

Dear Dick:

Earlier this year we discussed a proposed transaction and you suggested that I put the facts of the transaction in writing for your consideration. Since we first spoke, the terms of the proposed transaction have been better defined and I am writing now in response to your earlier request.

The proposed transaction, which is diagrammed on an attachment to this letter, involves an existing §501(c)(3) not for profit corporation, Joint Venture Corporation. Several years ago, a [redacted] affiliated, §501(c)(3) not for profit [redacted] corporation, System, and a [redacted] Authority created by state statute as a political subdivision of the state, Authority, formed Joint Venture Corporation. System and Authority were not required to file notification under the Act for the formation of Joint Venture Corporation. Joint Venture Corporation is owned 50/50 by System and Authority. After its formation, Joint Venture Corporation constructed a §501(c)(3) not for profit [redacted] System managed [redacted] pursuant to a management agreement with Joint Venture Corporation.

Authority proposes to sell its membership interest in Joint Venture Corporation as well as certain other related assets such as real property and real property leases for \$4,500,000 in cash to a newly created §501(c)(3) not-for-profit corporation, Newco. Newco, which is not related to System or Authority, (i) will not issue voting securities, (ii) will not have a corporate member, (iii) will have a self-perpetuating board of directors, (iv) will be its own ultimate parent, and (v) will have only minimal assets upon formation. Newco will borrow the \$4,500,000 purchase price from System and will repay the loan from the proceeds of real property leases to Joint Venture Corporation, which leases will be at fair market rent. In addition, Newco will grant

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System an option to purchase its interest in Joint Venture Corporation, which option will be exercisable at System's discretion.

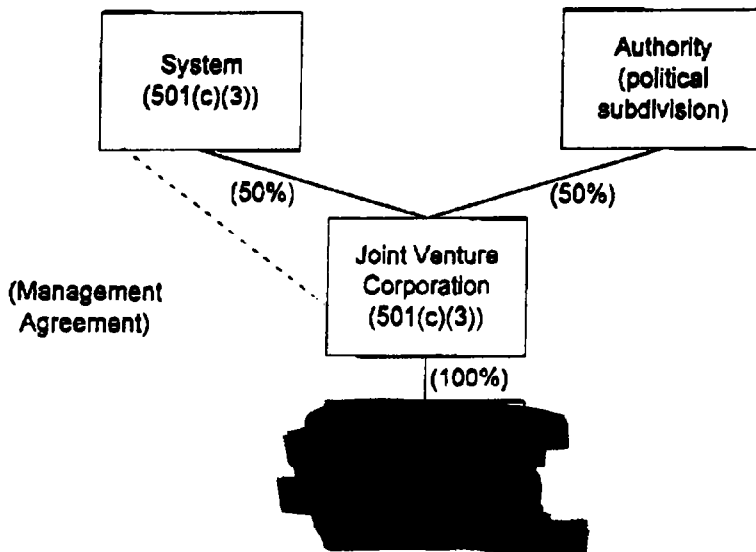
My analysis is that the transfer between Authority and Newco should be exempt under the Act under either of two separate bases. First, because Authority is a political subdivision of a state, the transfer of assets is from a political subdivision and is exempt under (c)(4) of the Act. Second, even if the transfer by Authority to Newco is treated as an acquisition by Newco, the size of person test under the Act is not met by Newco and the size of transaction test may not be met as well. In addition, the formation of Newco is not reportable both because of the size of Newco and because Newco will be a not-for-profit corporation that does not issue voting securities. System acknowledges that if it ever elects to exercise its purchase option (such that it becomes the sole owner of Joint Venture Corporation), a notification filing may be required if the jurisdictional tests of the Act are met by Newco and System at that time.

Please contact me at [REDACTED] to discuss whether the Premerger Notification Office agrees with the conclusion described in this letter and to discuss any questions you have.

Very truly yours,  
[REDACTED]

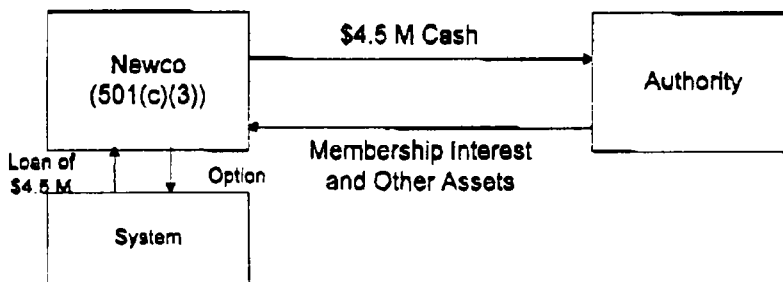
NMB/sl 6/5/96  
Enc. *Writer advised that the loan System's makes to Newco will carry a normal interest rate. There is no ownership or control relationship between System and Newco. I advised that no HSR report would be required for the transactions described herein, but that the option exercise by System, if and when it occurs, may require a prior HSR filing.*  
*he will have a bona fide creditor/debtor relationship*  
RBS Smith

### Current Structure



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### Proposed Transaction



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### Post-Transaction Structure

