

801.1 (c)

PREMERGER NOTIFICATION

VIA FACSIMILE

July 22, 1996

Mr. John Sipple  
Premerger Notification Office  
Federal Trade Commission  
Washington, D.C.

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

Dear John:

Pursuant to your request during our telephone conversation on July 18, I am writing this letter for purpose of asking you, on behalf of the Premerger Notification Office, to review (i) the relationship among certain religious sponsored not-for-profit entities and (ii) the terms of a proposed transaction between two of such entities, so that you can advise me with respect to the application of the Act to the proposed transaction and future filings made under the Act.

Sponsorship Structure.

A religious order (the "Order") is the sponsor of five not-for-profit corporations, which are [redacted] system corporation [redacted], an administrative services corporation ("Services"), a college ("College"), an academy ("Academy") and an operating company ("Inc."). The Order is not incorporated and uses Inc. as its legal entity to own property and to conduct many of its religious and charitable activities, including owning retirement homes for members of the Order. Services, directly or through subsidiaries, provides administrative services, such as administration of retirement plans, and insurance, to the Order and the other four sponsored corporations. Services is a captive, in that it does not provide administrative services or insurance to any outside entities. All of the [redacted] activities sponsored by the Order are conducted by [redacted] and its controlled entities.

[redacted] and College are not-for-profit entities without corporate members or voting securities and the terms of their by-laws are the same with respect to the election of directors. Each of the board of directors of [redacted] and College number twelve and are divided into two classes. Class I directors number three and consist of the President of the Order and two persons appointed by the President. Class 1 directors have certain items reserved to them, such as matters involving the religious identity and mission of the corporation, changes in charter documents and dissolution of the corporation. Class 2 directors include the Class 1

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directors. The President of [REDACTED] is a Class 2 director. At all times the board must be composed so that one-third of the board members are members of the Order, one half of the board members (including the Order members) are members of religious orders of the Catholic Church and one half of the board members are lay persons. With the exception of the Class 1 directors and the President of [REDACTED] the directors are elected by the board of directors (i.e., a self-selected board).

Services, Academy and Inc. are not-for-profit corporations having members but no voting securities. Pursuant to the terms of their by-laws, individual members of the Order who hold certain administrative positions with the Order are the members of these three corporations and such individuals also are the directors of the corporations.

The Order does not have the right to receive the profits of any of its sponsored corporations. Under the terms of their charters, upon dissolution, the assets of those corporations may be distributed only to the Order, but may be used otherwise in keeping with the charitable and not-for-profit purposes of the corporation, as determined by the board of directors of the corporation.

In prior filings under the Act, based upon prior oral advice from the Premerger Notification Office, [REDACTED] which itself is a \$100 million person, has filed as its own ultimate parent entity and has not included financial statements or revenues of the Order or any of the other sponsored corporations in its filings.

#### Proposed Transaction.

[REDACTED] as contracted with Services and Inc. to purchase certain assets of Services and the stock of Services' subsidiary insurance companies. The size of transaction test under the Act will be satisfied by the proposed transfer. Likewise, if [REDACTED] and Services are viewed as being their own ultimate parent entities, they will satisfy the size of person test under the Act.

#### Analysis.

Although the Order does not "control" either [REDACTED] or Services (as such term is defined under the Act's regulations), you stated in our telephone conversation that you would consider the Order to be the ultimate parent entity of both [REDACTED] and Services. If that is still your view, then the proposed transaction should not be reportable because both parties have the same ultimate parent entity, the Order. I believe the Premerger Notification Office refers to the definition of "hold" in 16 C.F.R. §801.1(c) in reaching this position. Please confirm that this transaction is not reportable under the Act because [REDACTED] and Services have the same ultimate parent entity.

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In our telephone conversation, you also stated that when determining the size of person of [REDACTED] in future transactions we should include the assets and revenues of the Order and the other four sponsored corporations. With respect to future filings made by [REDACTED] we ask that you confirm that [REDACTED] may omit from Items 4(a) and (b) the financial statements and annual reports of the Order and the other four sponsored corporations, and that the Order and the other four sponsored corporations may be omitted when answering Items 5 through 9.

Because of a scheduled August closing date for the proposed transaction, we ask that you respond to this letter at your earliest opportunity. If filings must be made for the proposed transaction, the parties would like to file by the end of this week. Thanks for your cooperation.

Very truly yours,

[REDACTED]

7/26/96 John Sipple confirmed that the PMN office would view the Order as controlling both [REDACTED] and Service and, since there is no other controlling or required person in the proposed transaction, no filings would be required. As to what need be provided in Order's responses to items 4(a) and (b) items 5 through 9 of the Form, the writer should call when a specific transaction is contemplated, so that these issues can be addressed in the specific context of the proposed transaction.

RTB/mth