[redacted]

801.40
801.10

[redacted]

April 1, 1999

VIA TELECOPY

Ms. Nancy Ovuka
Premerger Notification Office
Federal Trade Commission
6th St. and Pennsylvania Ave., N.W.
Room 303
Washington, D.C. 20580

Re: Hart-Scott-Rodino: Non-reportability Relating to the Formation of a Not-For-Profit Joint Venture

Dear Nancy

This letter confirms the advice that you provided to me last Friday, March 26, 1999 regarding the non-applicability of the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") as they related to the formation of a not-for-profit joint venture. The relevant facts are set forth below.

A1, a not-for-profit corporation (the "ultimate parent entity" of which is A), and B, a not-for-profit corporation (which is its own sole "ultimate parent entity"), intend to organize an Internal Revenue Code § 501(c)(3) not-for-profit corporation, NewCo. NewCo was formed in late 1998 for the sole purpose of being the joint venture owner of three nursing home facilities. As a precursor to the transaction, it must obtain a 501(c)(3) exemption letter from the Internal Revenue Service. Other than applying for a 501(c)(3) exemption letter, NewCo has not conducted any activities. NewCo will be owned 33% by A1, and 67% by B. A and B each meet the $100 million "size-of- person" test.

In connection with the formation of NewCo: (1) A1 will contribute to NewCo $3.34 million in cash and B will contribute to NewCo $6.66 million in cash; (2) A will cause A1 and A2, a for profit entity "con~~trolled" by A. to~~ contribute to NewCo three nursing home facilities in exchange for approximately $27 million in cash; and (3) A1 will receive 33% of the membership interests of NewCo and B w~~ill receive 67% of the~~ membership interests in NewCo.

not equilization, but payment of value of assets [redacted] [redacted]

[redacted] [redacted]

During our conversation last Friday, you advised me that neither the formation of NewCo nor the acquisition by NewCo of three nursing home facilities would be subject to the reporting requirements of the HSR Act because: (1) neither A1 nor B would be acquiring voting securities of NewCo since NewCo has no voting securities -- only membership interests; and (2) the three nursing home facilities would be acquired by NewCo in connection with its formation. Accordingly, 16 C.F.R. § 801.40 is inapplicable because no party will be acquiring voting securities in connection with the formation of NewCo and the acquisition of the nursing home facilities by NewCo is being undertaken in connection with its formation. Therefore, the foregoing transaction would not be subject to the HSR Act's reporting requirements.

As always, we thank you for your assistance. If the foregoing does not conform to your understanding of our conversation last Friday, please contact me. My direct number is listed above.

Sincerely,

[redacted]

[redacted]

Formation of NewCo - nonreportable 4/6
Acquisition by B of nursing homes
is reportable - $27.0 mm is
fair market value of assets, not
equalization payment

[redacted]