801.21
7A(c)(2)
801.1(c)

[redacted]

[redacted]

[redacted] December 8, 1999 [redacted]

BY FACSIMILE
Michael B. Verne
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Transfer of Interests In a Trust

Dear Mike:

Attached please find a description of the transaction we discussed on the telephone yesterday. Specifically, we need guidance in analyzing whether the transfer of interests in the trust described in the attached description could be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. Please call me if you have any additional questions. As always, thanks for your help.

Sincerely yours,

[redacted]

[redacted]

[redacted]

12/08/99

Summary of Transaction

Current Structure:

In a transaction that occurred in 1989, Company A received a debenture from Company X in the amount of $280 million (the "Debenture"), secured by the pledge of a certificate of deposit in the amount of $236.2 million (the "CD").

COMPANY A IS SETTLOR OF THE TRUST

Company A simultaneously borrowed $236.2 million in cash secured indirectly by the Debenture and the pledge of the CD. This borrowing was accomplished by forming a grantor trust (the "Trust") (a trust formed under the laws of Delaware) for tax purposes to which Company A transferred the Debenture and the CD, with Wilmington Trust as the trustee (the "Trustee") and Company A as beneficiary. The Trust entered into an agreement with Citibank pursuant to which Citibank agreed to issue commercial paper notes (the "Commercial Paper") on behalf of the Trust which are supported by a letter of credit (the "Letter of Credit"), with the Trust's obligation to reimburse the letter of credit issuer secured by a pledge of the Debenture and the pledge of the CD.

In 1995, the Debenture was restated as two separate debentures, one in the amount of $236.2 million secured by the pledge of the CD, and the other in the amount of $43.8 million (with this second debenture being repaid at that time). Accordingly, following this transaction in 1995, the Trust owned the Debenture for $236.2 million, and the related pledge of the CD for $236.2 million. The Trust currently owns these same assets.

PARTNERSHIP A IS CONTROLLED BY COMPANY A.

In December 1998, all of the rights and obligations of Company A under the trust agreement for the Trust (the "Trust Agreement") were transferred to and assumed by Partnership A, a partnership formed by Company A, in connection with Partnership A's formation. Accordingly, following such transfer, Partnership A became the beneficiary under the Trust.

Proposed Transaction:

ARE THE Y'S? SHOULD ... THE UPE?

Partnership A has decided that it would be desirable for tax reasons to convey its rights and obligations under the Trust Agreement to a separate UPE in exchange for the assumption of all of the obligations of Partnership A with respect thereto. Accordingly, such separate UPE would become the beneficiary under the Trust. Partnership A owns 95% of the equity in the separate UPE in the form of nonvoting common stock. The voting stock of the separate UPE (and 5% of its equity) is owned by a trust established for the benefit of employees of Partnership A. IS THIS TRUST ITS OWN UPE?

Provisions of Trust Agreement:

The Trust Agreement allows its beneficiary to transfer its interest in the Trust subject to the consent of the Trustee if a net worth test for the transferee is not met.

IS IT REALLY AN IRREVOCABLE TRUST UNDER THESE CONDITIONS?

The Trust is irrevocable so long as the Commercial Paper is outstanding. Upon the repayment of the Commercial Paper and satisfaction of all obligations under the Letter of Credit and related documents, the beneficiary may revoke the Trust and terminate the Trust Agreement.

SO NO ONE CONTROLS THE TRUST

The beneficiary may remove the Trustee without cause. However, any successor trustee (i) must be approved by Citibank (as the issuer of the CD and the facility agent for the Commercial Paper), such approval not to be unreasonably withheld, (ii) must not be an affiliate of the beneficiary, and (iii) must have a combined capital and surplus of $50,000,000.

IT APPEARS THAT PARTNERSHIP A CAN REVOKE THE TRUST AT ANY TIME IF IT CAUSES AN EVENT TO OCCUR, WHICH IS UNDER ITS CONTROL [redacted] (REPAYMENT OF THE COMMERCIAL PAPER)

ALL OF THE ASSETS OF THE TRUST ARE 801.21 ASSETS (DEBENTURES ARE BONDS, A CD IS A CASH EQUIVALENT), THEREFORE, EVEN IF BENEFICIAL OWNERSHIP PASSES, THIS IS NOT REPORTABLE.

B Michael Verne 12/15/99

(N. Ovuka, T. Hancock concur).