

[REDACTED]

October 8, 2004

[REDACTED]

MV

VIA OVERNIGHT DELIVERY

Michael Verne
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Application of Hart-Scott-Rodino Rules and Regulations

Dear Mr. Verne:

Thank you for your oral response to my letter of September 13, 2004 (copy attached). As I understand your comments, you agree that there is no "acquisition price" because no consideration is being paid. Whether the transaction is reportable would, therefore, appear to depend on a calculation of "fair market value."

We wish to clarify the implication of the fact that there is no acquisition price. We believe that we can attempt to determine the "fair market value" of Company B by obtaining an independent appraisal. It would seem to follow that if the appraisal concludes that Company B has a fair market value of less than \$50 million, the transaction - i.e., the substitution of a new parent for the existing parent of Company B - would not satisfy the size of the transaction test. As a consequence, the transaction should not be reportable.

We would appreciate an additional response on this point.

*AGNES -
B. [Signature]
10/8/04*

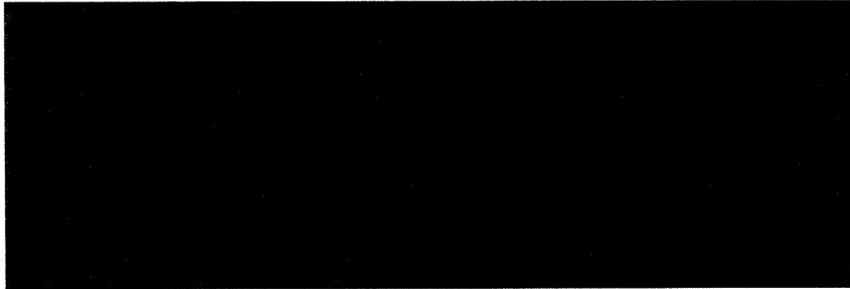
Respectfully,

[REDACTED]

Attachment

[REDACTED]

[REDACTED]




September 13, 2004

VIA OVERNIGHT DELIVERY

Michael Verne
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Application of Hart-Scott-Rodino Rules and Regulations

Dear Mr. Verne:

We are writing regarding the interpretation of the Hart-Scott-Rodino Act and the rules and regulations interpreting it. In general, the question has to do with rules regarding the Hart-Scott-Rodino reportability of member substitutions among not-for-profit entities, and specifically, determining the value of the transaction where the entity to be acquired is in substantial danger of failure.

Company A and Company B are non-profit entities that meet the size-of-person requirement. However, we are seeking confirmation about the method for determining whether or not the transaction would satisfy the size-of-transaction requirement. Generally, the contemplated transaction would substitute a newly-created parent of Company A for the current parent of Company B through a member substitution. Specifically, Company A will create a parent organization ("Parent") that will have the authority to appoint the Board of Trustees of both Company A and Company B.

No money is to be paid in consideration for the change of membership. Neither Company A nor the Parent would be paying any funds to Company B or its current parent. Company B, not the Parent, will continue to remain responsible for its debts and liabilities after the transaction.

Company B is a financially troubled institution that may not survive over the long term. Indeed, Company B's most recently prepared balance sheet shows approximately \$140




Michael Verne
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million in assets and \$180 million in liabilities. Since the book value of Company B would appear to be well below \$50 million, the Parent's attempt to assume control of the institution and to resolve Company B's significant financial and operational problems would not appear to be reportable. However, we understand that the "book value" of a company is not used to determine the value of the transaction for HSR purposes. Rather, we understand that the value of the transaction is the fair market value of the assets.

We are requesting confirmation that the appropriately determined fair market value (e.g., an independent appraisal), can be the basis upon which we should decide whether or not the value of the contemplated transaction exceeds \$50 million, and, therefore, would be subject to the Hart-Scott-Rodino notification requirements.

We look forward to your response.

Respectfully,

