

June 13, 2005

Facsimile: 202-326-2624

Mr. James Ferkingstad  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Re: Confirmation of Conclusion

Dear Mr. Ferkingstad:

Previously, you and I spoke regarding a transaction relating to the sale by a trust of substantially all of its assets in exchange for interests in a limited partnership. I am writing to confirm the conclusion with respect to whether the transaction is reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), and the rules (the "Rules") promulgated thereunder.

The trust was formed by the trustor's transfer of legal title to the trust property to the trustee. The initial trustee of the trust was designated in the trust agreement and was a party thereto. Under the trust agreement the trustee may be removed by the affirmative vote of a majority of the trust unit holders present at a duly called and held meeting of the trust unit holders. Successor trustees are also appointed by a majority of the trust unit holders present at a duly called and held meeting of the trust unit holders. Units of beneficial interest in the trust are widely held.

It is contemplated that the trust unit holders will vote to sell all of the trust's assets (other than cash), with a value in excess of \$200 million, to a newly formed limited partnership in exchange for limited partnership units that aggregate to 98% of the outstanding limited partnership interests after the transaction. The limited partnership will be formed prior to the transaction with a nominal cash contribution from the general partner and at the time of the transaction will hold no assets other than cash. Following the trust's acquisition of limited partnership units, the trustee will distribute the limited partnership units pro rata to the trust unit holders.

Rule 801.2(f)(1)(i) provides that "in an acquisition of non-corporate interests which results in the acquiring person controlling the entity, that person is deemed to hold

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all of the assets of the entity as a result of the acquisition. The acquiring person is the person acquiring control of the entity and the acquired person is the pre-acquisition ultimate parent entity of the entity." Rule 801.2(f)(2) states that "any contribution of assets or voting securities to an existing unincorporated entity or to any successor thereto is deemed an acquisition of such voting securities or assets by the ultimate parent entity of that entity and is not subject to Rule 801.50 [Formation of unincorporated entities]." Example 2 to Rule 801.2(f) states as follows:

LLC X is its own ultimate parent entity. A contributes a manufacturing plant valued in excess of \$200 million (as adjusted) to X which issues new interests to A resulting in A having a 50% interest in X. A is acquiring non-corporate interests which confer control of X and therefore will file as an acquiring person. Because A held the plant prior to the transaction and continues to hold it through acquisition of control of LLC X after the transaction is completed no acquisition of the plant has occurred and LLC X is therefore not an acquiring person.

Our transaction is very similar to the above cited example, with the additional fact that the limited partnership in this transaction holds no assets at the time of the transaction other than cash. Based upon the example cited above, no acquisition of the trust's assets should be deemed to occur and the limited partnership should not be deemed to be an acquiring person. Under Rule 801.21, cash is not considered an asset of the person from which it is acquired. Therefore, the trust should not be deemed to be acquiring any assets since the only asset the limited partnership holds prior to the transaction is cash. Accordingly, the acquisition of limited partnership units by the trust and the acquisition of assets of the trust by the limited partnership should not be reportable under the Act. Whether the distribution of limited partnership units by the trustee to trust unit holders will be reportable depends upon whether a person holding trust units will acquire a controlling interest in the limited partnership. At this time we do not know the answer to that question.

I wish to thank you in advance for your time and consideration in this matter. If you have any questions, please telephone me at [REDACTED]

Very truly yours,

[REDACTED]

6/15/05 JF Agree  
MN concurs  
Treat as formation  
& not reportable

[REDACTED]