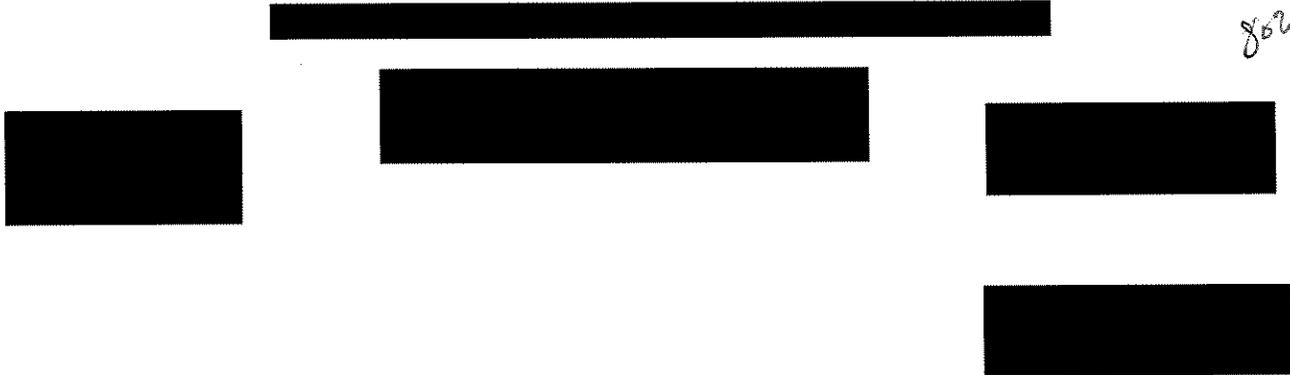


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October 12, 2006

**BY COURIER**

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

2006 OCT 13 AM 9:00

Dear Mr. Ferkingstad:

I am writing to confirm your oral advice on Tuesday, October 10<sup>th</sup>, that the transaction described below need not be reported under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. §18a ("HSR").

"D LLC" is owned 36.75% by "B Corp.", 61.24% by "C Corp.", and 2.01 % by certain individual managers at D LLC. B Corp.'s only asset is its ownership interest in D LLC.

A group of investors are organizing "New Fund LP." It will be capitalized with approximately \$40 million. No other person will control New Fund LP for HSR purposes. New Fund LP



will organize A Corp., and will control A Corp., but some shares of A Corp. will be issued to managers of D LLC.

Pursuant to a single agreement among all the relevant parties, and at a single closing:

1. A Corp. will merge with and into B Corp, and the current shareholders of B Corp. will be paid approximately \$40 million for their shares. B Corp. will be the surviving entity in this merger.

2. B Corp. will purchase for approximately \$80 million the ownership interests in D LLC that are currently held by C Corp. and the certain managers of D LLC. B Corp. will borrow the money to acquire these interests from D LLC, which will have just borrowed these funds (and more) from third-party lenders.

We note that:

3. A Corp. is merging with B Corp. instead of purchasing B. Corp.'s ownership interest in D LLC, solely because of tax considerations.

4. B Corp. is borrowing the funds for Step 2 from D LLC, instead of from the third-party lenders directly, solely because the lenders prefer to lend the funds to D LLC.

We recognize that this transaction could be deemed two acquisitions: (a) acquisition of B Corp. by New Fund LP, which would not be reportable under HSR because New Fund LP will not meet the size-of-person test under 15 U.S.C. §18a(a)(2)(B) based upon the "pass through" rule in 16 C.F.R. §801.11(e); and (b) acquisition of D LLC by New Fund LP, which would be reportable under HSR. On the other hand, if A Corp. purchased all the ownership interests in D LLC, instead of acquiring some of them indirectly by merging with B Corp., that transaction would not be reportable under HSR because New Fund LP (the UPE of A Corp.) would not meet the size-of-person test under 15 U.S.C. §18a(a)(2)(B) and Rule 801.11(e).

You advised us that, in light of all the circumstances here, the Premerger Notification Office will consider this a single transaction, in which New Fund LP will acquire 100% of the ownership interests in D LLC; and therefore this transaction need not be reported under HSR because New Fund LP will not meet the size-of-person test under 15 U.S.C. §18a(a)(2)(B).

Thank you again for your patience as I discussed this transaction with you. Please let me know by the close of

[REDACTED]

Mr. James Ferkingstad  
October 12, 2006

business on Monday, October 16<sup>th</sup>, if I have misstated your advice that this transaction need not be reported under HSR.

Sincerely,

[REDACTED]

cc: [REDACTED]

10/19/06 Agree JF  
M. J. Ferkingstad

[REDACTED]