

801.1(c)(4)

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February 28, 1994

VIA TELECOPIER (202) 326-2050

Richard Smith, Esq.
Staff Attorney
Pre-Merger Notification Filing Office
Federal Trade Commission
Bureau of Competition
Room 303
Washington, D.C. 20580

Re: Hart-Scott-Rodino Antitrust
Improvements Act (the "Act")

Dear Mr. Smith:

YOU may recall our conversation last week in which I sought your guidance in interpreting the application of 16 CFR § 801.1(c)(3) to a grantor retained annuity trust (the "Trust") to which our firm is counsel. At your suggestion, I am writing to request an advance determination as to whether the grantor's right to receive certain distributions from the Trust constitutes a "reversionary interest in the corpus" for purposes of determining whether beneficial ownership of certain securities owned by the Trust must be attributed to the grantor of the Trust (the "Grantor"). The relevant facts are as follows:

1. At present, the Grantor and the Trust each owns approximately 25% of the common stock of a holding company. These shares are non-voting. The Trust does not presently hold any stock in any of the subsidiaries of the holding company.
2. The holding company proposes to spin-off all of the shares held by it in one of its majority-owned subsidiaries to the present shareholders of the holding company. Immediately after the spin-off, the Grantor and the Trust will each hold approximately 18.75% of the voting securities of the subsidiary (certain minority interests in the subsidiary will be held by others). For purposes of this letter, it is assumed that the fair market value of the subsidiary stock to be held by each of the Grantor and the Trust immediately following the spin-off will

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not exceed \$15,000,000, but if aggregated the holdings of the Trust and the Grantor would exceed that amount.

3. (a) The Trust is a "grantor retained annuity trust." It is irrevocable and cannot be amended by Grantor, except that, in certain cases, Grantor may revoke the interest of his wife in the Trust. The corpus of the Trust will consist of the subsidiary's common stock acquired by the Trust in the spin-off, as well as the shares of non-voting common stock of the holding company which it presently holds.

(b) For the first five years of the Trust, the Grantor will be entitled to receive annuity payments equal to (i) in the first year of the Trust, 16.4% of the original net fair market value of the Trust property as of the date the Trust was established, and (ii) in each of years 2 through 5, an amount equal to 120% of the prior year's payment. Such payments are to be made out of Trust income, provided that if such income is insufficient to make the full annuity payment, the balance of such payment is to be paid out of principal.

(c) In addition, the Grantor may, in the discretion of the other trustee, receive a payment from the Trust each year in an amount necessary to enable the Grantor to pay any taxes owing by the Grantor on the income derived by the Trust and not distributed to the Grantor.

(d) Upon expiration of the five year trust term, all Trust property (including the entire corpus thereof and all undistributed income thereon) is to be disposed of as follows:

(i) If the Grantor is then living, in trust for Grantor's wife (unless her interest in the Trust has been revoked by Grantor, in which case the Trust property is to go directly in trust to Grantor's children) and, upon her death, in trust for Grantor's children. Upon the death of such children, the Trust property is to be distributed to the issue or estates of such children;

(ii) If the Grantor is not then living, then a portion of the trust property equal to a fraction, the numerator of which is equal to the amount of Trust property, if any, includable in Grantor's gross estate and the denominator of which is equal to the value of Trust property as determined in Grantor's federal estate tax return, shall be distributed to Grantor's estate and the balance of the trust property shall be disposed of as provided in subparagraph 3(d)(i) above. The distribution to Grantor's estate is intended to provide the estate with property sufficient to pay any estate tax

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attributable to the inclusion in such estate of any of the Trust property. If no such property is so includable, no such distribution will be made.

(e) Finally, the Trust contains customary provisions permitting the Grantor to substitute for any portion of the Trust property other property of an equivalent value, and granting the trustees discretion to pay any amounts owing to a beneficiary either in cash or in kind.

4. Based on current estimates of fair market value, the value of the non-voting stock of the holding company will constitute the vast majority (approximately 93%) of total Trust assets immediately following the spin-off. Accordingly, it would be possible to satisfy the Trust's annuity obligations to Grantor that cannot be satisfied out of income solely out of the stock of the holding company.

Although the Grantor has the right to receive the required annuity payments out of trust income and, to the extent such income is not sufficient for such purpose, out of trust principal, and to receive discretionary distributions necessary to enable him to pay any taxes owing on Trust income which is taxable to him, he retains no right to receive back any portion of the Trust corpus upon termination of the Trust or upon the failure of a specified condition, which is the usual and customary definition of a reversionary interest in the corpus of a trust. Thus, it would appear that although the Grantor retains certain distribution rights, he retains no "reversionary interest in the corpus" within the meaning of 16 CFR § 801.1(c)(3).

Please confirm to the undersigned in writing your informal agreement or disagreement with the above conclusion. Because closing of the proposed spin-off is desired at the earliest possible date, we will be most appreciative of your prompt review of this matter.

Very truly yours,

[REDACTED SIGNATURE]

cc: Richard Smith, Esq.
Regular Mail

3/1/94 - advised writer that if grantor names itself as beneficiary of trust (and paragraph 3.(b) seems to clearly establish this), the IRS R of 7/31/78 at 33459 states that the settlor is deemed the holder of the trust's assets. Holdings of the trust and grantor must be aggregated.