

801.2(d); 802.20(a)

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March 1, 1996

CERTIFIED MAIL

Mr. Richard B. Smith
Federal Trade Commission
Assistant Chief
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Washington, DC 20580

This material may be subject to the confidentiality provisions of Section (b) of the Clayton Act which restricts release under the Freedom of Information Act.

Re: Acquisition of a Membership in a Nonstock, Nonprofit Corporation as an Acquisition of Assets

Dear Mr. Smith:

I am writing to confirm our phone conference of February 29, 1996 with [redacted] of this office, [redacted] and [redacted] and me.

As we discussed, [redacted] represents an "Acquiring Person" who will become the sole member of a Virginia nonstock, nonprofit corporation which operates an [redacted] (the "Acquired Person") in substitution for the current sole member. My firm represents the current member and the Acquired Person. You confirmed that the Federal Trade Commission takes the position that any restructuring in the memberships of nonstock, nonprofit corporations is considered a consolidation within the meaning of Section 801.2(d) of the Regulations, but that the Federal Trade Commission treats such acquisitions of membership interests in nonstock corporations as asset acquisitions for report form and valuation purposes. Furthermore, you confirmed that Section 802.20(b) of the Regulations, which provides that acquisitions of voting securities which confer control of an issuer with annual net sales or total assets of \$25,000,000 or more, is inapplicable to our transaction.

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Accordingly, the acquisition of a membership interest in a nonstock, nonprofit corporation is only be reportable if the parties meet the size of the parties test and the fair market value of the assets to be acquired are more than \$15,000,000.

I trust this letter accurately reflects our phone conference. If it does not, or if you have any questions, please contact me.

Very truly yours,
[REDACTED]

[REDACTED]

3/6/96 - Advised writer that, in paragraph two above, the advice given is that of an informal interpretation by the Premier's Office, which is not binding on the Commission or the Department of Justice. As reflected in ABA Letters #s 99 + 115, becoming the sole member of a ~~non~~ non-profit is treated as an asset acquisition for report form and valuation purposes and, as such, 802.20(b) does not come into play.

R B Smith