

802.2(c)

December 14, 2000

Nancy Ovuka
Premerger Notification Office
Federal Trade Commission
Room H-319
Washington, D.C.

2000 DEC 14 P 3 36
FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

Re: Real Estate Exemption/Section 802.2(c)

Dear Nancy:

I am writing to confirm two conversations that we had this week concerning the applicability of the exemption in Section 802.2(c) to two proposed transactions.

In the first transaction, Company A will acquire an option pursuant to which it will have the right to acquire all of the assets of an LLC. The acquisition of the option is exempt since no assets are being acquired. When the option is exercised, the "assets" that will be acquired will include real estate on which a power project is to be built and the permits and contracts associated with that project, including an air permit, interconnection agreement, construction and development agreements, utility agreements, output agreements and the like. At the time of the acquisition of the LLC, no construction will have taken place on the real estate and, since the power plant will not have been built, no revenues will have been generated. We agreed that the exemption in Section 802.2(c) does apply; i.e. the real estate being acquired is "unproductive real property" as defined in that section and the permits and agreements are "assets incidental to the ownership of real property."

I subsequently asked you about a somewhat different situation in which Company B will acquire 100 percent of the interests in a partnership. The facts are the same as those involving Company A except that the real estate will be leased rather than purchased. You said that the exemption would apply because the Staff has interpreted Section 802.2 to apply to leases if the lease pertains to real property, the acquisition of which would be exempt if purchased outright. Thus, the additional assets (the permits and agreements) fall within the category of "assets

incidental to the purchase of real property" and the acquisition of the partnership by Company B will be exempt under Section 802.2(c).

I hope I have correctly conveyed our discussions, and, if not, please do let me know. *
Thank you very much for your assistance.

Best regards.

Sincerely,



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