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802.5
NEW FORMAL
INTERPRETATION
BEING WRITTEN

[redacted]

[redacted]

March 7, 2001

By Facsimile
Michael Verne
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: REIT Merger

Dear Mike:

I am writing to confirm my understanding of the proper Hart-Scott-Rodino ("HSR") analysis of a real estate investment trust ("REIT") transaction we discussed on the telephone on March 6, 2001. Specifically, [redacted] and I discussed the following hypothetical with you.

REIT A is planning to acquire REIT B. REIT A is its own ultimate parent entity ("UPE") and is also the UPE of an operating partnership, ALP. REIT B is its own UPE and the UPE of an operating partnership, BLP. REIT A will acquire REIT B through the following steps. BLP will merge with and into ALP, with ALP surviving. The partners of BLP will acquire partnership units of ALP in exchange for their holdings of BLP partnership units. No one entity will hold 100% of the interests of ALP as a result of this transaction. REIT B will then merge with and into REIT A, with REIT A surviving. The stockholders of REIT B will receive, in exchange for their shares of REIT B voting securities, cash and shares of REIT A voting securities. An entity in which REIT A presently holds only non-voting securities, ANCS, will acquire 100% of the voting securities of an entity in which REIT B presently holds only non-voting securities, BNCS. At the time of the closing, however, REIT A could hold over 50% of the voting securities of ANCS and REIT B could hold over 50% of the voting securities of BNCS.

I understand that under the REIT Exemption to the HSR Act, an entity whose UPE is a REIT may acquire the voting securities of another REIT

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without having to file a HSR notification so long as the acquired REIT does not hold at least 50% of the outstanding voting securities of what is known under federal tax law as a Taxable REIT Subsidiary ("TRS") and does not have the contractual power to appoint at least 50% of the directors of a TRS. If the acquired REIT does hold at least 50% of the outstanding voting securities of a TRS or does have the contractual right to appoint at least 50% of the directors of a TRS, the acquisition of that REIT by another REIT would still not be reportable if the fair market value of the acquired REIT's holdings of such TRS would be $50 million or less. It is not necessary when determining whether the REIT Exemption would apply to a REIT's acquisition of another REIT to examine any other holdings or interests of the acquired REIT or to examine any holdings or interests of the acquiring REIT. Of course, if the acquired REIT holds less than 50% of the voting securities of any corporations, the acquiring REIT would have to analyze whether any secondary acquisition filings would be necessary.

Therefore, so long as REIT B does not hold at least 50% of the outstanding voting securities of a TRS, and does not have the contractual right to appoint at least 50% of the directors of a TRS, the merger of BLP with and into ALP and the merger of REIT B with and into REIT A would be exempt from HSR reporting requirements under the REIT Exemption. Even if, however, REIT B does hold at least 50% of the outstanding voting securities of a TRS or does have the contractual right to appoint at least 50% of the directors of a TRS, the merger of BLP with and into ALP and the merger of REIT B with and into REIT A would still not be reportable if the fair market value of REIT B's holdings in such TRS is less than or equal to $50 million.

Please let me know if the HSR analysis described above is incorrect in any way. As always, Mike, thank you for your help.

Best regards,

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AGREE - T. HANCOCK CONCURS.

B Michael Verne

3/8/01

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