

7A(c)(10)  
802.4  
802.5

[REDACTED]

August 22, 2001

B. Michael Verne  
Federal Trade Commission  
Bureau of Competition  
Premerger Notification Office  
Room 303  
6th St and Pennsylvania Ave, N.W.  
Washington, DC 20580

Re: Senior Living Facility Transaction

Dear Michael:

This letter is to confirm our conversation yesterday. I described for you the following transactions:

1. A real estate investment trust ("REIT") proposes to acquire the stock of a corporation ("SLF") which owns, directly or indirectly, a number of senior living facilities. The assets and stock of SLF have fair market values significantly in excess of \$200 million. The senior living facilities include, in almost all cases, assisted living units and, in most cases, units which provide special care or skilled nursing services similar to those which might be provided in a nursing home. The senior living facilities are all managed for SLF by a third party manager ("Manager") under long term contracts.
2. In the past, REIT has made certain investments in healthcare properties which have become defaulted. In connection with the resolution of those investments, REIT formed a subsidiary

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("OpCo") to hold the stock or membership interests of corporations or LLC's formed to serve as the licensed operator of certain healthcare facilities. The properties operated by OpCo are managed under agreement by a third party manager ("HC Manager"). REIT proposes to "spin out" ownership of OpCo pro rata to REIT's shareholders. Prior to the spin out, OpCo will enter into leases of all the related real property, which will remain owned, directly or indirectly, by REIT. For purposes of this analysis, it is assumed that the fair market value of OpCo's assets at the time of the spin out will exceed \$50 million. At the effective date of the spin out, the shareholders of REIT and the stockholders of OpCo would be identical, with no shareholder owning an interest greater than 9.9% in either entity. Initially, there would be a significant overlap between the boards of the two companies. The shares of OpCo would become publicly traded and, accordingly, the two companies' shareholders may differ increasingly as time passes.

3. Immediately following the spin out, HC Manager would be merged with and into OpCo. The assets and stock of HC Manager will have a fair market value at the time of the merger which is substantially less than \$50 million.
4. Prior to the spin out of OpCo, REIT proposes to enter into an agreement with OpCo pursuant to which contemporaneously with the acquisition of SLF by REIT, REIT will lease the real property (the "SLF Realty") used for all the senior living facilities owned by SLF to OpCo. The agreement would also provide for the contemporaneous transfer to OpCo of the operating assets of SLF which are not incidental to the ownership of the SLF Realty (the "Other SLF Assets"). The Other SLF Assets include the personal property used in connection with the operation of the skilled nursing units and the long term contracts with Manager (which are expected to continue in force). The Other SLF Assets have a fair market value of less than \$50 million.

As discussed, for purposes of the analysis, I assume that all relevant size-of-party tests have been met.

You concurred in my analysis that these transactions could be consummated without premerger notification. More specifically,

- (a) A pro rata spin out, such as that proposed for OpCo, is exempt from premerger notification. 7A(c)(10)
- (b) Under the circumstance described above, the merger of HC Manager into OpCo is exempt from notification because the size-of-transaction test is not met.
- (c) Under the circumstances described above, the acquisition of SLF by REIT is exempt from notification under §§ 802.4 and 802.5.
- (d) The transfer of the Other SLF Assets to OpCo is exempt from notification, either as part of the spin out transaction or because it otherwise fails to satisfy the size-of-transaction test.

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At your convenience, please call me at [REDACTED] if you wish to discuss any of this further or to confirm that I have accurately reported our discussion.

Very truly yours,

[REDACTED]

AGREE WITH THE WRITER'S CONCLUSIONS.

B. Michael Verne

8/22/01