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ATTORNEYS AT LAW

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March 25, 2002

802.4
802.2

Michael Verne
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20530

Dear Mike:

Thank you for taking the time to talk through with me a few issues regarding the reportability of a proposed transaction under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (as amended). The purpose of this letter is to follow up on our discussions and summarize the conclusions we discussed.

The proposed transaction that we are assessing relates to a merger transaction whereby all of the voting securities of Company A will be acquired by a subsidiary of Company B in exchange for cash. Company A's assets (including the assets of all entities that Company A controls) consist of (i) hotel properties, (ii) leasehold interests in hotel properties, (iii) management contracts relating to hotels in which Company A either owns or has a leasehold interest, (iv) management contracts relating to hotels that Company A does not own or hold a leasehold interest, and (v) cash. § 802.4 of Title 16 of the Code of Federal Regulations (hereinafter all such sections of the Code of Federal Regulations will be referred to as "Rule") exempts from notification requirements under the Act the acquisition of voting securities of an issuer whose assets consist of certain specified classes of assets identified in that Rule the direct acquisition of which would be exempt, if the acquired issuer and all entities it controls do not hold other non-exempt assets with an aggregate fair market value of more than $50 million. We discussed each class of assets described above and reached the following conclusions:

(i) Hotel properties are among the class of assets the acquisition of which would be exempt identified in Rule 802.4 and hence the aggregate value of these assets is not included in determining whether the $50 million threshold for non-exempt assets is met in Rule 802.4.

(ii) The acquisition of leasehold interests in hotel properties are treated the same as hotel properties for purposes of Rule 802.2 and hence are also afforded the same treatment as hotel properties under Rule 802.4 described in the preceding paragraph (i.e., the aggregate value of these assets is not included in determining whether the $50 million threshold

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for non-exempt assets is met in Rule 802.4).

(iii) Management contracts relating to hotels in which Company A either owns or has a leasehold interest are likewise exempt under Rule 802.2 and hence the aggregate value of these assets is not included in determining whether the $50 million threshold for non-exempt assets is met in Rule 802.4.

(iv) Management contracts relating to hotels that Company A does not own or hold a leasehold interest, however, are not exempt under Rule 802.2 and thus the aggregate value of these contracts must be included in determining whether the $50 million threshold for non-exempt assets is met in Rule 802.4.

(v) Notwithstanding Rule 801.21 which provides that cash is not considered an asset from the person from which it is acquired for purposes of determining the aggregate total amount of assets held as a result of an acquisition, cash is considered a non-exempt asset for purposes of Rule 802.4 unless there is a direct nexus between the cash acquired and the operation or sale of assets or properties exempt under Section 7A(C)(2) of the Act or Rules 802.2, 802.3 or 802.5 (e.g., office properties, residential properties, hotels).

As we discussed, the cash held by Company A was generated from the sale of hotel properties, leasehold interests in hotel properties, and senior living properties. With the exception of the value of those portions of senior living properties that are devoted to skilled nursing care, all three classes of properties fall into the exempted classes in Rule 802.4 and thus cash generated from their sale satisfy the direct nexus test and is likewise treated as exempt for purposes of Rule 802.4.

Regardless of whether there exists any nexus between the cash held by Company A and the sale or operation of Rule 802.4 exempt properties, cash held by Company A is not included as part of the value of non-exempt assets for purposes of Rule 802.4 to the extent it is deposited at or before closing into an escrow arrangement for post-closing distribution to shareholders of Company A such that there is no transfer of beneficial ownership of that cash in favor of Company B at the time the shares of Company A are acquired.

Please let me know if any of the above is incorrect. Again, many thanks for your kind and quick help.

AGREE WITH THE WRITER'S CONCLUSIONS.

Sincerely,

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3/27/02