

802.5



February 4, 2005

**VIA FACSIMILE AND HAND DELIVERY**

B. Michael Verne  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
6th & Pennsylvania Ave., NW  
Washington, DC 20580

2005 FEB -4 PM 1:48

FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

Re: Application of HSR Rule §802.5 Investment Rental Property Exemption

Dear Mike:

I am writing to memorialize the advice you were kind enough give me during some recent telephone conversations regarding a proposed sale of partnership assets involving real estate. In this transaction, the Sellers are a group of separately-controlled Maryland limited partnerships that collectively own and operate several skilled nursing facilities located in Maryland, New Jersey, and North Carolina. Buyer (a Delaware limited liability company) is acquiring all of the Sellers' interest in the real estate, improvements, and assets relating to the nursing home businesses operated on the acquired properties. The purchase price is expected to be in the neighborhood of \$50 million.

In fact, all of the nursing home facilities in question are operated by a third-party nursing home care provider to whom Sellers have contracted out the business of operating the facilities on these properties. Buyer's unrelated third-party tenant will continue to contract out the business to the same third-party nursing home care provider. Thus, both Buyer and Seller conceptualize this transaction primarily as a transfer of real estate interests, and the reality is that the transaction will have no direct effect upon competition within the business of providing nursing home services.

You agreed that based on these facts, the transaction as described properly falls within the real estate exemptions of the HSR Act. I believe the applicable provision would be HSR

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Rule §802.5, which exempts certain acquisitions of investment rental property assets. Given that the portion of the purchase price attributable to the real property and its improvements is exempt under that section, the value of the non-exempt assets being acquired in the transaction is far less than \$50 million, and the transaction does not meet the notification threshold of the HSR Act.

I would be obliged if you could confirm that this letter is a correct statement of your analysis of this transaction, or notify me as soon as possible in case you disagree. As always, many thanks for your patient attention to this matter.

Sincerely,



cc: 

AGREE -

*B. M. ...*

2/7/05