

802.5

October 20, 2005

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

Re: HART-SCOTT-RODINO ACT ("HSR")

Dear Mr. Verne:

This letter confirms our conversation of this afternoon in which we discussed the applicability of the Hart-Scott-Rodino-Antitrust Improvements Act of 1976 ("HSR Act") disclosure requirements to the transaction on which we are currently working. Thank you for talking with us. We believe that the transaction falls squarely within the exemption applicable to acquisitions of investment and rental property assets codified at 16 C.F.R. 802.5 and does not require any HSR Act filing.

Our transaction is an asset sale of a number of assisted living and skilled nursing home facilities and operations, as well as a sale of different equity interests in a number of health care related businesses, for a total price of approximately \$100,000,000.00. The transaction involves three groups: a seller group, a buyer/operator group, and a buyer/1031 purchaser group. Within each group, the various entities are related by common ownership, common controlling individuals and have the same ultimate parent entity. Between the groups, there are currently no existing relationships, no common ownership and no common individuals. The transaction is currently documented in a single agreement between the seller group and the buyer/operator group, but contemplates the introduction by the buyer/operator group of the buyer/1031 purchaser group.

The seller group is selling the real property (fee and leasehold interests) directly to the buyer/1031 purchaser group and is selling the other operational assets and the operating rights, contracts and patient relationships directly to the buyer/operator group. More than eighty (80%) percent of the purchase price reflects the value of the real estate being acquired by the buyer/1031 purchaser group. The buyer/1031 purchaser group will in turn lease the real estate to the

buyer/operator group under typical lease agreements negotiated between those groups, at market rental rates. The leases grant an option to the buyer/operator group to purchase the real property subsequent to the third anniversary of the lease inception (exercisable at the buyer/operator group's sole option).

The buyer/1031 purchaser group is purchasing the real estate solely for investment purposes in order to rent the properties. The properties are currently subject to a similar structure with operating companies renting the real estate from the real property owners (although the parties are related). The buyer/1031 purchaser group has no intention to convert the property from its present use and the property is not currently being leased by a competitor of the buyer/1031 purchaser group. The buyer/1031 purchaser group has not undertaken a study of the cost of converting the property for use by one of its businesses.

We believe that the portion of the transaction relating to the transfer of the real estate to the 1031 purchaser group falls squarely within the exemption applicable to acquisitions of investment or rental property assets codified at 16 C.F.R. 802.5, and thus, the purchase price to be paid for this part of the transaction can be excluded from the HSR valuation. Since the remaining assets and equity to be acquired by the buyer/operator group is substantially below the current \$53.1 million dollar threshold of the HSR Act, the transaction will not trigger the HSR Act filing requirements, either by the seller group, the buyer/operator group or the buyer/1031 purchaser group.

Please let us know if you disagree with the conclusions spelled out in this letter. Thank you for taking the time to talk with us. With kindest regards, I am



Enclosure



cc:



AGREE -
B. M. ...
10/20/05

