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Office
Building

[REDACTED]

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HAND DELIVERED

Mr. Patrick Sharpe
Compliance Specialist
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Room 303
Washington, DC 20580

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FRL MINDEN
NOTIFICATION
OFFICE

Re: Pre-Merger Notification Reporting Requirements/Exemption from Requirements for Acquisition of Certain Real Property and Other Intangibles

Dear Mr. Sharpe:

This letter will confirm our phone conversations of Wednesday, January 23, Thursday, January 24, and Wednesday, January 30, 1991, and is intended to amend and supercede my letter of January 29, 1991. During our conversations we discussed the Staff's position with regard to the exemption from pre-merger notification reporting requirements for the acquisition of certain types of real property and the assignment of proceeds from a lease. As a result of our conversation and a review of the specifics of our client's proposed acquisition of certain real property, we have determined that the acquisition is not a "reportable event" under the Pre-Merger Notification Rules promulgated pursuant to Section 7a of the Clayton Anti-Trust Act and set forth in 16 CFR Parts 801-803 (the "Rules"). For your records, I have restated certain details of our client's proposed acquisition, through a 95%-owned corporate subsidiary, of a portfolio of real estate in the State of [REDACTED]. If, after reviewing this letter, you differ with my characterization of the Staff's opinion, please contact me.

As I described to you, our client, an institutional investor, intends to enter into a series of transactions, the first of which involves the formation of a corporation ("Newco") with one other investor. Our client has assets in excess of \$100 million. The

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other shareholder will be an individual unrelated to our client whose total assets do not exceed \$10 million. This individual also does not hold a controlling interest in any corporation, partnership or other entity with assets or sales in excess of \$10. Thus, even though Newco will be capitalized with a combination of debt and equity in an amount in excess of \$10 million, the formation of Newco will not be a reportable event under Rule §801.40 since one of the acquiring persons has assets in excess of \$100 million, but the other acquiring person does not have assets or sales in excess of \$10 million. During our conversations, you confirmed this conclusion.

The second phase of the acquisition consists of the purchase by Newco of a portfolio of 92 parcels of real property and related assets located throughout the State of [REDACTED]. The portfolio is being purchased from the real estate owned ("REO") portfolios of several different [REDACTED] banks owned by the same bank holding company. The real estate being purchased consists of a variety of properties: retail, commercial, office warehouse, residential, undeveloped land, residential lots, and office buildings. Under Section 7a of the Clayton Act and Rule §802.1, the acquisition of real property transferred in the ordinary course of business is exempt from the reporting requirements. In addition, under the Staff's interpretation and application of the statutory provisions and the Rules, the acquisition in all cases of office buildings, residential properties and undeveloped land is also exempt from the reporting requirements. You have noted that to the extent any of the office buildings contains retail or commercial space, an acquisition of such building would not be a reportable event unless the value of such retail or commercial space within the office building exceeded \$15 million. You further noted the Staff's position that, for the purpose of determining whether the value of retail or commercial space being acquired exceeded \$15 million, the retail and commercial space in several office buildings need not be aggregated.

*Do aggregate
a building
complex*

A number of the parcels being acquired consist of office-warehouse complexes. You noted that if the complex was truly a warehouse, the value of the whole property would be includable as non-exempt property. You suggested that a particular property should properly be considered a warehouse if it was "primarily" a warehouse. We discussed the fact that the Staff has apparently not been faced with the question of exactly what determines whether a property is "primarily" warehouse or office space and that this is somewhat of a gray area. However, you agreed that, to the extent

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aggregate
commercial
space*

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the office space in the building is greater than fifty percent of its total usable square footage, the building would probably be considered by the Staff as an office building and thereby exempt property.

Finally, an additional element of the transaction is the assignment to Newco of certain proceeds of a ground lease. One of the banks involved in the transactions owns a parcel of land which is subject to lease and on which the tenant has constructed an office building. Under the ground lease agreement, the tenant is obligated to pay base rent as well as a certain "percentage rent," "sales proceeds," and "excess financing proceeds," each as defined under the lease. All proceeds, other than the base rent, will be assigned to Newco as a part of the acquisition. The base rent will be assigned to Newco as well, but only as security for the full payment of the agreed-upon value of the other proceeds. You explained that it is the Staff's opinion that the acquisition of a stream of income is exempt from the reporting requirements of the Act.

The lease is not being transferred. They are buying a stream of income

Based on the foregoing understanding of the Rules and the Staff's opinion, we have calculated that the value of all the non-exempt property our client proposes to acquire from the several banks is less than \$15 million in the aggregate. Accordingly, we have concluded that the proposed acquisition would not be a reportable event under the Rules.

If you disagree with my restatement of our discussions or the Staff's opinion, please call me as soon as possible.

Respectfully submitted,

[REDACTED SIGNATURE]

[REDACTED]

I concur

(RS) agrees, as long as lease is not transferred.

called [REDACTED]

1-31-91

[REDACTED]