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July 9, 1992

VIA HAND DELIVERY

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Pre-Merger Notification Office  
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Room 301  
Washington, D.C. 20580

JUL 9 4 40 PM '92  
FEDERAL TRADE  
COMMISSION  
PRE-MERGER NOTIFICATION  
OFFICE

Dear Patrick:

Thank you for discussing with me on Friday June 26, 1992 the reportability of various real estate related transfers under the Hart-Scott-Rodino Antitrust Improvements Act ("Hart-Scott-Rodino Requirements"). This letter will confirm the description of the transactions I gave to you at that time as well as the analysis we applied to each situation.

The situations are as follows:

1. My client, a company subject to the requirements of the Real Estate Investment Trust Act of 1960, as amended, (*i.e.*, a "REIT") (hereinafter referred to as "Company A"), proposes purchasing from Company B in an asset transaction a currently operating and income producing shopping center.
2. Company A proposes purchasing from Company C in an asset transaction, two currently operating and income producing shopping centers and an office building.
3. Company A proposes purchasing from Limited Partnership D in an asset acquisition, two income producing shopping centers, a building and surrounding raw land rented to a bank, and a parcel of land.

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4. Company A proposes purchasing from Person E a parcel of land which he owns but leases to Partnership F and proposes purchasing from Partnership F the leasehold interest, which will be conveyed to Company A as an assignment of lease. Partnership F has operated a shopping center on the property.
- ✓ 5. Company A is contemplating possibly consummating certain of the above purchases pursuant to the provisions of § 1031 of the Internal Revenue Code. A § 1031 transaction involves two transfers: (1) Company A sells through a qualified intermediary (i.e., a title insurance company or other independent third party) one property and the funds from that property are held by the intermediary; and (2) within 180 days, qualified intermediary purchases from an unrelated party a replacement property with the funds received from the sale of the first property by Company A and then transfers the replacement property to Company A. The real estate purchase agreement for the replacement property may or may not list Company A as the purchaser.

*intermediate  
the agent  
of A 20  
look that  
away*

For purposes of this letter only, we will assume that in situations 1-4 and the second part of situation 5 (i.e., the purchase of the replacement property), the size of the parties and size of the transaction tests have been satisfied. Furthermore, we will assume that only Company A in these scenarios qualifies as a REIT.

With respect to situations 1-4, you indicated to me that the purchase of any of the above described real property by a REIT is exempt from the Hart-Scott-Rodino Requirements under 15 U.S.C. § 18a(c)(1) since it is an acquisition of realty in the ordinary course of business. This exemption applies to REITs even when the property they are purchasing is income producing. Furthermore, the purchase of the fee simple interest in an income producing shopping center in two parts, as described in situation 4, would comply with this exemption.

*Review Notifying Officer*

With respect to situation 5, you indicated to me that the Federal Trade Commission would focus on the substance of the transfer rather than the form and would conclude that the intermediary is merely serving as a continuum for Company A such that the intermediary's purchase would not be a separately reportable event. Instead, the Federal Trade Commission would

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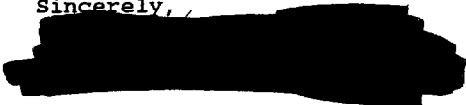
and if purchase is  
not that of a REIT

analyze whether Company A would have a reporting requirement. Since the REIT exemption only applies when the REIT is purchasing rather than selling the real property, the first transaction described in situation 5 (i.e., the sale of property owned by Company A) would not be automatically exempt from Hart-Scott Requirements and, if the filing thresholds were satisfied by this portion of the § 1031 transfer, a filing may be required. However, the second portion of the § 1031 transfer (i.e., the purchase of the replacement property and ultimate transfer to Company A) would be exempt from Hart-Scott Requirements since Company A is a REIT.

For more information contact

Please let me know immediately if I have in any way misunderstood the Federal Trade Commission's position on these transactions. Thank you for your assistance in this matter.

Sincerely,



- 1) The "continuum theory" does not apply because of the potential time gap in the acquisition by the intermediary
- 2) Is the intermediary acting as an agent?
- 3) This is not the view of the Federal Trade Commission. It is the premerger office staff that gives "internal advice".

PS  
After checking  
with RS