

7A(c)(1)

February 17, 1993

VIA FAX - (202) 326-2050

Richard Smith, Staff Attorney
Premerger Notification Office
Room 301
Federal Trade Commission
Washington, D.C. 20580

Re: Duty of Real Estate Investment Trust to Make
Premerger Notification and Report

Dear Mr. Smith:

As we discussed today, I am writing to request your opinion as to whether a certain transaction described below involving two real estate investment trusts would require filing of the premerger notification and report under the Hart-Scott-Rodino Act

REIT A and REIT B are both California business trusts formed in compliance with Section 23000 et seq. of the California Corporations Code. Each REIT operates in a manner so as to qualify as a real estate investment trust under Section 856 et seq. of the Internal Revenue Code of 1986, as amended. REIT A has assets worth more than \$55,000,000, the ultimate parent entity of REIT A has assets worth over \$100,000,000 and REIT B has assets worth more than \$30,000,000.

REIT A proposes to acquire all of the assets of REIT B in exchange for newly issued shares of REIT A (the "New Shares"). REIT B will dissolve and distribute the New Shares

[REDACTED]
Richard Smith, Staff Attorney
February 17, 1993
Page 2

to its shareholders at an exchange ratio of 1.5 New Shares for each outstanding share of REIT B. The assets which REIT A will acquire are as follows: about \$30,000,000 of real property, about \$4,000,000 of notes receivable, and other assets worth about \$2,000,000. REIT B will receive in exchange 6,266,585 New Shares, which are worth around \$13,500,000 based on the trading price of REIT A Shares immediately prior to public announcement of the proposed transaction. REIT B will hold about 40 percent of the voting securities of REIT A after completion of the transaction.

Please call me at [REDACTED] at your earliest convenience.

Very truly yours,
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
2/18/93 - advised [REDACTED] that REIT A's purchase of the assets of REIT B is exempt from HSR reporting ^{under 7(A)(1)(ii) if} ^{the acquirer} on the acquiring person and, if it is a REIT, it may acquire the voting stock or assets of another REIT. The New Shares are treasury stock of REIT A. Its outstanding shares are traded on an exchange, so she used their value to approximate the value of shares going to REIT B and then to its shareholders, which are numerous. I advised that it appears that this procedure was a reasonable proxy for fair market value and the ~~an~~ value of the stock was below 15% and did not constitute 50% of REIT A. [REDACTED] modified [REDACTED] last sentence in the last paragraph to state that REIT B would hold the 40% of REIT A's voting stock for an instant before it distributed it to REIT B shareholders. REIT B would then be dissolved.
RBSmith