

3 7A (c)(1)

May 4, 1993

Melea Epps, Esq.
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
Washington, DC 20580

Dear Ms. Epps:

This letter is to confirm our conversations last Wednesday. Attached is an outline of the transaction I described to you. You advised me that provided that the REIT is qualified under the Internal Revenue Code (the "I.R.C.") and the real property and improvements to be acquired are "income producing", the proposed acquisition described in the outline is exempt from premerger notification, pursuant to § 7A(c)(1), as an acquisition in the ordinary course of business of the REIT.

Please be advised that "qualification" as a real estate investment trust under the I.R.C. is dependent upon operating results for complete taxable years. The REIT has received legal advice that it qualified for taxation as a real estate investment trust during past taxable years. An accurate statement of the REIT's status for its current taxable year (and any subsequent taxable year which has not ended) is (i) the REIT intends to be and to remain qualified as a real estate investment trust under the I.R.C., and (ii) the REIT believes that its current and anticipated investments and plan of operation will enable it to continue to meet the requirements for qualification and taxation as a real estate investment trust under the I.R.C. Actual qualification of the REIT as a real estate investment trust at any point in time, however, will depend upon the REIT meeting, through actual operating results for the corresponding taxable year, the various qualification tests imposed under the I.R.C.

My understanding is that, for purposes of the § 7A(c)(1) exemption, "qualification" as a real estate investment trust under the I.R.C., in the sense you intended, means the status described in the preceding paragraph. Any other interpretation would mean the availability of the ordinary course of business exemption would only be determined with certainty in retrospect and, therefore, the exemption would be effectively unavailable.

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Accordingly, I believe the REIT is "qualified" under the I.R.C. in the sense you intended. It would be helpful if the definition of "qualified" in your rule-making proposal is clarified to encompass the interpretation in the preceding paragraph.

If I have misunderstood your advice or, in light of the foregoing, further clarification is necessary, please call me at [REDACTED]

Very truly yours,
[REDACTED]

[REDACTED]

I called [REDACTED] and explained to him that, with respect to the first paragraph of his letter, non-income producing property is generally exempt, regardless of the nature of the acquiring person. The advice I gave is that a qualified REIT that acquires income-producing property is not required to report the acquisition, which is pursuant to the OCB § 1A(c)(1) exemption.

OUTLINE OF PROPOSED TRANSACTION

The proposed transaction is to be entered into by a real estate investment trust (the "REIT").

The REIT is in the business of making investments in special purpose properties which can be used in the operation of certain businesses. In order to retain its qualification for taxation as a real estate investment trust under federal tax laws, the REIT may not operate these properties itself (except in limited circumstances following a default in an investment). Rather it must lease the properties to third parties, who operate the properties and pay rent for the privilege.

An insurance company ("Ins. Co.") is the ultimate parent of a company that currently owns certain real property (the "Owned Property") and that also has 50% interests in certain unincorporated joint ventures (the "Joint Venture Interests") which in turn own certain other real property (the "Joint Venture Property"). The Owned Property and the Joint Venture Property are currently leased to persons not included within the same ultimate parent as either the REIT or Ins. Co. (the "Existing Operators").

The Existing Operators operate [REDACTED] on each parcel of Owned Property and Joint Venture Property. The real property and the leases to the Existing Operators include related buildings and equipment on each parcel. The leases run for an additional two to ten years and most give the Existing Operators rights to renew for additional terms from five to ten years.

The REIT proposes to buy the Owned Property and either the Joint Venture Interests or the Joint Venture Property from the subsidiary of Ins. Co. (which may, by the time of the closing, have acquired a 100% interest in the Joint Venture Property). The leases with the Existing Operators will remain in place and the proposed acquisition would be subject to the rights of the Existing Operators under the leases.

For the purposes of this analysis, we assume that the REIT and Ins. Co. both have total assets in excess of \$100 million and that the value of the real property, buildings and equipment which will be acquired by the REIT (exclusive of the value of any Joint Venture Interests) exceeds \$15 million. Does the acquisition of such real property, building and equipment require premerger notification?