

802.2(d)
802-20

VIA FACSIMILE

July 13, 2000

Mr. Michael Verne
Premerger Notification Office, Room 303
Federal Trade Commission
6th Street & Pennsylvania Avenue, NW
Washington, D.C. 20580

2000 JUL 13 11:21
FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

Re: Application of Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act")

Dear Mike:

The purpose of this letter is to confirm the oral advice you gave me on behalf of the Premerger Notification Office of the Federal Trade Commission in various telephone conversations over the last several weeks. The terms of the proposed transaction that we discussed are repeated below.

Company A is a large, not-for-profit health care corporation that has a variety of operations. Company B is a not-for-profit corporation that operates residential facilities for senior citizens. Company B proposes to purchase from Company A a life care residential facility located on 43 acres of land. The facility consists of 59 villas, 235 apartments located in a high-rise apartment building, and two separate facilities housing both skilled nursing beds and "shelter care" facilities (the "health facilities"). The health facilities are separate from the villas and the apartment building and do not share amenities with the villas and the apartment building other than parking lots and laundry and kitchen facilities (warming kitchens are in health facilities). While the "shelter care" portion of the health facilities may qualify as "residential" in nature, for the purpose of this analysis we have considered it to be non-exempt property. In addition to the real property, Company B will be acquiring certain vehicles and equipment and the rights to the center's trade name, and will be assuming certain liabilities.

On a square foot basis, the health facilities are approximately 22½% of the total square footage of the life care center. In calculating the square footage percentage, only the health facilities themselves were included in the non-exempt assets. All common areas (such as parking

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lots) and all amenities for the apartments and villas (such as a beauty shop, the convenience store, swimming pools, dining areas and fitness facilities) were considered 100% residential.

Company B will pay Company A approximately \$3 million in cash at closing and up to approximately \$2 million in cash over the next 10 years and will assume approximately \$27.5 million of liabilities as of the closing. The board of directors of Company B has determined, through a designee, that the "fair market value" of the health care facilities and related equipment is less than \$15 million. Likewise, only a small portion of the purchase price will be allocated to the health facilities. As for the liabilities being assumed, they consist primarily of refundable deposits made by the residents of the life care center, prepaid health care for the residents and ordinary course operational liabilities. In our conversations, you indicated that it would be permissible to allocate all of the liabilities relating to the refundable deposits to the residential (exempt) assets. We have done so in our analysis. Allocating all of the prepaid health care liabilities to the non-exempt assets and allocating a portion of the ordinary course operational liabilities on a square footage basis to the non-exempt assets, the total "acquisition price" (including the cash portion) for the non-exempt assets is less than \$15 million.

On the basis of the facts set forth in this letter and our discussions, we believe that Company A and Company B should be able to rely on the exemptions set out in 16 C.F.R. §§802.2(d) and 802.20 and may proceed with the transaction without giving notice under the Act.

Please contact me at [redacted] upon receipt of this letter to confirm that you agree with my restatement of the position of the Pramerger Notification Office with respect to the proposed transaction.

Very truly yours,

[redacted signature block]

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AGREE - NO FILING IS REQUIRED.

B. Michael Verne
7/13/00