

April 29, 2004

By Hand Delivery

Nancy M. Ovuka, Esq.
Premerger Notification Office
Federal Trade Commission
6th Street and Pennsylvania Avenue
Washington, D.C. 20580

2004 APR 30 A 7:16
FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

Re: Reportability of acquisition of timberland assets by REIT

Dear Nancy:

This confirms our telephone conversation today in which you advised that the facts described below do not give rise to a filing obligation under the Hart-Scott-Rodino Act:

Company A is conducting business as a real estate investment trust ("REIT") as defined by the applicable provisions of the Internal Revenue Code ("IRC"). In a proposed asset acquisition, Company A, or one of its qualified REIT subsidiaries (either a partnership or LLC) to be determined (collectively referred to hereinafter as "Company A") intends to acquire certain timberlands from Company B, a non-REIT. The only material assets of Company A are and will be timberlands and associated timber cutting and related agreements.¹ Company A will generate income from the acquired timberlands pursuant to section 631(b) of the IRC. That section provides for a passive method of timber disposition under which a timber owner can enter into cutting contracts with unrelated timber purchasers. Under these "pay-as-cut" agreements, the timber purchaser enters the timber property, cuts the timber and pays the timber owner based upon the volume of timber removed by the purchaser from the property. Company A will not lease for its own use any of the timberland assets to be acquired from Company B.

We assume that the parties to the proposed transaction satisfy the size of the parties test and that the transaction exceeds the size of the transaction test. We also assume that the transaction does not qualify for exemption under section 802.2(c) because of prior cutting and removal of timber during the ownership by Company B.

¹ Portions of the timberlands are currently leased by Company B to hunting clubs. Company A intends to continue this leasing activity. Under these leases, Company A will receive rental income from the clubs.



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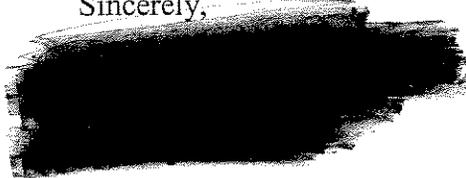
In this case, as a REIT timber owner, Company A will enter into timber cutting contracts under which the timber purchaser cuts the timber and pays the owner for the timber removed. The Internal Revenue Service ("IRS") has recognized the passive nature of this revenue under IRC section 631(b) and regards the underlying transaction as a "lease" of timber property, producing a form of passive royalty income.

Section 802.5 provides that acquisitions of investment rental property assets shall be exempt from the requirements of the Hart-Scott-Rodino Act. Accordingly, as a REIT operating in conformity with section 631(b) of the Internal Revenue Code, Company A's acquisition of the timberland assets of Company B will be exempt from the premerger filing requirements of the Hart-Scott-Rodino Act. This conclusion is consistent with the Premerger Office's longstanding interpretation that acquisitions of income producing real estate by a REIT are exempt from premerger filing requirements so long as the REIT acts in conformity with the requirements of the IRS.

As I mentioned during our telephone call, this is a particularly important matter for Company A in light of the fact that it may make additional acquisitions of timberlands in the future based on the same factual circumstances and will necessarily rely on the Premerger Office's advice that such acquisitions are exempt from the filing requirements of the Hart-Scott-Rodino Act. Please let me know at your earliest convenience if I have not summarized correctly the position of the Premerger office.

Thank you for your assistance.

Sincerely,



5/3/04

Confirmed advice w/
writer by telephone.

N. Ovuka

M. Kerne concurs

