

802.5



November 11, 2004

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PREMERGER NOTIFICATION  
OFFICE

**VIA FACSIMILE (202) 326-2624**

Mr. Michael Verne  
Premerger Notification Office  
Federal Trade Commission  
Room 303  
6th and Pennsylvania Avenue, N.W.  
Washington, D.C., 20580

Re: Premerger Notification under the Hart-Scott-Rodino Antitrust  
Improvements Act of 1976, as amended

Dear Mike:

It was a pleasure speaking with you yesterday. This letter will confirm our discussion whereby you confirmed that the transaction described below should not be subject to the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act").

For purposes of our discussion, we assumed that the so-called "size-of-person" and "size-of-transaction" tests were met.

Specifically, we discussed that "A" was selling one of its businesses (the "Business") pursuant to asset transactions. The sale would take place through two simultaneous transactions: in the first transaction, "A" would sell the realty associated with the Business to "B"; and in the second transaction, "A" would sell all of its other assets relating to the Business to "C". In connection with these two sale transactions, "B" would enter into an agreement with "C" to lease to "C" the real property that "B" acquired from "A". "B" would not be operating the Business that "C" acquired from "A"; "A", "B" and "C" are all unrelated parties.



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We discussed that a transaction of this nature should be exempt from the reporting requirements of the HSR Act pursuant to 16 C.F.R. § 802.5 – Acquisitions of Investment Rental Property Assets. 16 C.F.R. § 802.5 – Acquisitions of Investment Rental Property Assets – provides as follows:

(a) Acquisitions of investment rental property assets shall be exempt from the requirements of the act.

(b) Investment rental property assets. “Investment rental property assets” means real property that will not be rented to entities included within the acquiring person except for the sole purpose of maintaining, managing or supervising the operation of the real property, and will be held solely for rental or investment purposes. In an acquisition that includes investment rental property assets, the transfer of any property or assets that are not investment rental property assets shall be subject to the requirements of the act and these rules as if they were being acquired in a separate transaction. Investment rental property assets include:

- (1) Property currently rented,
- (2) Property held for rent but not currently rented,
- (3) Common areas on the property, and
- (4) Assets incidental to the ownership of property, which may include cash, prepaid taxes or insurance, rental receivables and the like.

\* \* \*

We trust that this letter accurately reflects our discussions. If this letter does not accurately reflect our discussions or should you have any questions or require any additional information, please contact us. As always, we appreciate your assistance.

Very truly yours,

[Redacted Signature]

AGREE -  
B. [Signature]  
11/19/04

[Redacted]

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