

Verne, B. Michael

802.50
802.51

From: [REDACTED]
Sent: Tuesday, November 29, 2005 5:13 PM
To: Verne, B. Michael
Subject: REIT Exemption

Dear Mr. Verne:

I am seeking to understand the PNO's exemption for Real Estate Investment Trusts as discussed in section 197 of the Premerger Notification Manual and various letters available on the FTC's website. The current situation is somewhat fluid since the transaction is still being shaped, but as currently contemplated a Canadian REIT would be formed as a trust under the laws of Ontario. Units in the REIT would be sold to the public. Thereafter, the REIT would purchase and then operate skilled nursing facilities, assisted living facilities and rehabilitation hospitals (collectively "senior care facilities") in the United States. Some of these facilities would be acquired through asset purchases, some through acquisitions of REITs and some through acquisitions of other corporations. It is assumed for the purpose of this discussion that all size of person and size of transactions tests would be met.

It is my understanding that formation of the Canadian REIT would be governed by section 801.50, unless it is exempt under section 802.51. Further, it is my understanding that, assuming the Canadian REIT is prepared to qualify (See Informal Opinion 9510008) as an REIT for U.S. tax purposes under section 856 of the Internal Revenue Code, the Canadian REIT can purchase and then operate the senior care facilities without filing a Hart Scott notification, regardless of whether the senior care facilities are acquired through a purchase of assets, a purchase of another REIT or the purchase of stock of another corporation which owns the facilities. (See Informal Opinions 9404001, 9206005, 9304002, 9403002, 9302005, 9503024, 9903010, 0012006) The only exception to the Canadian REIT's ability to make such purchases without filing under Hart Scott would be if the Canadian REIT would end up holding 50% or more of the outstanding stock of a Taxable REIT Subsidiary (see Informal Opinion 0103003).

Further, it is my understanding that, although the prospect of a new formal interpretation on REITs is discussed in Informal Opinion 0103003, dated March 7, 2001, no such formal opinion has been issued. However, the issuance of the new rules on unincorporated entities has not changes the position of the PNO on the proper treatment of REITs.

I would appreciate your thoughts on the foregoing summary of the PNO's treatment of REITs. I would be happy to obtain your thoughts either by return email or by telephone at the number below. Thank you for your cooperation.

[REDACTED]

AGREE -
Bruehl
11/30/05