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PRIVILEGED AND CONFIDENTIAL

April 5, 1989

This material may be subject to the confidentiality provision of Section 7A (h) of the Clayton Act which restricts release under the Freedom of Information Act

Mr. Patrick Sharp
Compliance Specialist
Federal Trade Commission
Room 303
Washington, D.C. 20580

Re: **HSR Requirements for Specific Realty Acquisitions**

Dear Mr. Sharp:

The enclosed attachments were written for the purpose of summarizing your responses to my telephone inquiries of Friday, March 31, 1989, regarding the applicability of the Hart-Scott-Rodino Act to specific types of assets transfers contemplated by [redacted]

Please advise me of any comments you may have regarding this summary. Thank you for your kind attention to my questions.

Very truly yours,

[redacted]

[redacted]

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE
1 37 PM '89

Re: **Summary of Inquiry with Respect to HSR Requirements for Specific Asset Acquisitions**

(In Summary of our conversation of March 31, 1989) Provided that the Acts commerce, size of the person, and size of the transaction tests are satisfied, a Hart-Scott-Rodino (HSR) filing is required with respect to the transfer of certain classes of assets. The size of the transaction test is satisfied if:

1) The purchase price (if determined) or fair market value of the assets (whichever is greater) exceeds $15 million dollars; or

2) The transfer constitutes more than 15% of the assets of the acquired person.

section 802.20 eliminates the need to look at this threshold for asset purchases

(The acquired person with respect to asset acquisitions is the ultimate parent entity of the person filing notification.)

Assuming the threshold tests are satisfied, the general rule with respect to the transfer of the classes of assets listed below are:

A. Foreclosure Property - A creditors' acquisition of collateral or receivables, upon foreclosure or default, or in connection with the establishment of a lease financing, or a debt work-out, if made in a bonafide credit transaction entered into in the ordinary course of the creditors business is exempt from the reporting requirements (Rule 802.63 of the Act), This section exempts only the acquisition by the creditor and not the subsequent disposition of the foreclosed collateral to a third party..

B. Agri-Businesses (i.e. [redacted] - The rule with respect to the transfer of any business is, a filing is required if the purchase price or fair market value of the business exceeds $15 million.

C. Agricultural Lands - The transfer of any land which in the past served as a business from which revenues were derived is a potentially reportable transaction. The purchase price or fair market must meet the threshold size of the transaction test.

D. Mineral Rights - the transfer of land upon which lies minerals or timber is reportable, whether or not the land

wrong - If timberland has been harvested in the past it is reportable. Otherwise, it is not reportable. Land with mineral rights is still raw land - not reportable.

has ever been excavated. The premise upon which the FTC determines reportability is that with respect to such transfers, the mineral properties have a value independent from the land itself based on the income potential of the minerals. The transfer of the right to the income in such properties is exempt provided that the underlying beneficial ownership remains the same. The transfer of Vacant Lots, which have no independent revenue producing characteristics, are exempt from the reporting requirements.

E. Accounts Receivable - the transfer of accounts receivable are reportable transactions if the receivables are the primary objects of the transfer. If the receivables are *de minimis* or incidental with respect to the transfer as a whole, the value of the receivables as assets does not require a filing. This gray area requires consultation with the FTC before determining the applicability of the act.

If a business is being acquired. all of the assets of a division or of a company whether acct's rec. or other assets — not exempt

F. Mixed-Use Office Buildings - The transfer of buildings which function strictly as office space is exempt. The fair market value of the space utilized by hotels, restaurants, retail, and other establishments, which derive revenues from business operations within office building structures must be determined to ascertain whether the transfer of office buildings are exempt from the reporting requirements. If the value of the mixed-use space exceeds $15 million dollars, the transfer of the office building is reportable. The tests that are used to determine the applicability of the Act to mixed-use space operates as follows.

1) Square Footage Evaluation - The person filing determines the total square footage of the office building including the mixed-use property, and the fair market value or purchase price of each square foot. If the dollar value of the mixed-use square footage exceeds $15 million dollars, a filing is necessary.

We do not have any set guidelines as to how it should be valued

2) Income Stream - This test requires an examination of revenues rather than the fair market value or purchase price of the assets being transferred. The revenues derived by the mixed-use business are determined for the most recent year. The most recently prepared balance sheet should be used to determine the revenues. If more than $15 million dollars, in the most recent year, were derived by the business operating within the building being transferred, a filing is required.

The flexibility of the size of the transaction test with regard to the transfer of mixed-use properties may conceivably result in manipulation of the true values of the properties so as to avoid filing, a violation of Section 801.90 of the Act. Due to this fact, the FTC recommends that persons subject to the act verify their filing status by calling or writing the FTC for an informal opinion.

G. Condominium Complexes - The transfer of residential property, i.e., apartment buildings is normally exempt, except that, the transfer of condominiums may require a filing. The terms of such transfer should be discussed with an FTC official before a final decision as to the applicability of the Act is made.

I don't know of any cases of condominium being reportabl It's a good idea to call PMN office to discuss the possibility of filing.

called [redacted] 4-18-89 and conveyed my comments