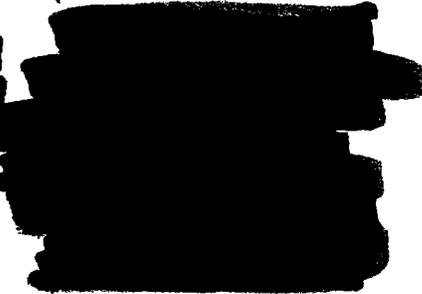


ATK

Rule 802.1 (Turnkey Facility)



July 13, 1989



JUL 14 11 00 AM '89

Jeffrey Kaplan, Esquire  
Federal Trade Commission  
6th and Pennsylvania Avenue  
Washington, D.C. 20580

Dear Mr. Kaplan:

Pursuant to our telephone conversation on June 26, 1989, I am writing to confirm your informal advice that a pre-merger filing pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 is not required in connection with the transaction described herein.

Our client (referred to herein as "Seller") is the owner of a hotel property presently under construction (the "Property"). Pursuant to an Agreement of Purchase and Sale between the parties (the "Agreement"), Seller has contracted to sell the Property to an unrelated third party (referred to herein as "Buyer"), upon completion of construction. The purchase price to be paid for the Property is approximately \$22,200,000.00.

A. Ownership of the Entities.

Seller is a limited partnership. Its sole asset is the Property. The sole limited partner of Seller is a large equity investment company (referred to herein as the "Equity Company"), which primarily makes real estate investments and is 100% owned by a finance company engaged, as part of its business, in making real estate acquisition and development loans. For purposes of this request, please assume that the Equity Company's total assets or annual net sales are in excess of \$100 million. The Equity Company is entitled to receive 50% of the distributions of Seller. The sole general partner of Seller is a general

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partnership, which is owned [70%/30%] by two individuals. The general partnership also is entitled to 50% of the distributions of Seller. The general partnership's sole asset is its ownership interest in Seller. However, the two individual general partners of the general partnership have investments in a number of other hotel properties.

Buyer is a corporation. For purposes of this request, please assume that Buyer has total assets or annual net sales in excess of \$10 million.

B. The Transaction

Seller purchased the land upon which the hotel is being constructed for the purpose of constructing a hotel thereon. The Agreement provides, and the parties contemplate, that Seller will not open or operate the hotel. Closing under the Agreement is scheduled to occur upon completion of construction of the hotel. The parties contemplate that Seller would prepare the hotel for opening, and Buyer would open the hotel almost immediately after closing. However, if closing is delayed beyond the date contemplated in the Agreement, it is possible that Seller would open the hotel for a brief period of time prior to its sale to Buyer.

On the basis of these facts, we believe that the exemption set forth in 15 USC section 18A(c)(1) for "acquisitions of goods or realty in the ordinary course of business" applies to the sale of the Property. The property in the hands of Seller is not a productive asset, but will be a productive asset in the hands of Buyer. If the facts set forth above differ from your understanding of the facts based upon our earlier telephone conversation, I would appreciate if you would let me know as soon as possible.

Based upon our telephone conversation, and the facts as described above, it is our understanding that a pre-merger filing is not required. If we are not correct in this understanding, or

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if you have any questions or need any additional information,  
please do not hesitate to contact John A. Stemmler in this  
office, or me.

Very truly yours,

[REDACTED]

[REDACTED]

cc:

[REDACTED]

7/17/89 called [REDACTED] and  
[REDACTED] met in and I spoke to  
[REDACTED] advised that hotel  
appeared to be a "tourist"  
facility and, as such, would not be  
reputable. If seller operates on  
only a few weeks or so, would not  
seem to lose status as "tourist  
hotel". However, if seller operates for  
an extended period, could lose  
status and might need to be reclassified.  
Associate underwriter  
[Signature]

[REDACTED]

[REDACTED]