

12-14-89 04:36PM

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§ 802.63 (b)

VIA FACSIMILE

RRS:GM

December 15, 1989

re 16 C.F.R. § 802.63(a)

Thomas F. Hancock, Esq.
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Hancock:

As you suggested in our telephone conversation of December 11, I am writing to determine whether the Premerger Notification Office would consider the exemption provided under 16 C.F.R. § 802.63(a) applicable to the facts set forth below. More specifically, I am interested in your position on whether the situation described would be deemed "an acquisition of collateral...in connection with a bonafide debt workout..." under that provision.

To finance the acquisition of a certain hotel (the "Hotel"), Debtor, a foreign corporation, borrowed a sum of money (the "Loan") from Lender, also a foreign corporation. Lender is a subsidiary of a foreign corporation which is engaged in various aspects of the insurance business. To secure the Loan, an affiliate of Debtor and the owner of the Hotel (the "Mortgagor") mortgaged the Hotel giving Lender a first lien on the property. Debtor executed a promissory note for a certain amount (the "Note"). The amount was subsequently increased to the aggregate of the Loan, and the original Note was amended. Moreover, Debtor's parent (the "Parent"), Mortgagor and another of Debtor's subsidiaries, which owns the personal property used in the Hotel's

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operations (collectively, the "Guarantors"), jointly and severally guaranteed the obligations of Debtor under the Note.

Six months thereafter Debtor received an invoice for payment of interest accrued and due on the Note which it could not pay. Lender asserts that Debtor has defaulted under the Note. Consequently, Debtor and the Guarantors are now obligated to pay to Lender the entire principal balance and outstanding interest under the Note.

To eliminate the obligations of Debtor and reduce the obligations of the Guarantors created by Debtor's inability to make payments due under the Note, Debtor agrees to sell its interest in the Hotel to a newly formed subsidiary of Lender. In consideration for the Hotel, Lender will cancel the Note of Debtor and reduce the liability of the Guarantors under the Guarantees. The Guarantors will remain liable under the Guarantees for the obligation of Debtor equal to the difference between the Hotel purchase price and the original amount of the Note before it was increased and other obligations guaranteed to Lender and its affiliates. Moreover, Mortgagor will be released from obligations under the Mortgage.

Although Lender anticipates operating the Hotel through a subsidiary, it does not plan to do so on a long term basis. Rather, the Hotel will be resold as soon as market conditions are favorable.

I emphasize that Lender considers Debtor's failure to make timely payments under the Note to be a default under the Loan. It has decided to purchase the Hotel in efforts to avoid taking against Debtor what Lender considers to be less effective and more costly remedies. Further, I understand that in bankruptcy practice "workout" typically refers to debt restructuring both to avoid or cure insolvency (inability to pay debt as it becomes due) and to avoid legal proceedings -- exactly what the parties seek to accomplish in the situation described.

Assume that absent an exemption the transaction is otherwise reportable under Hart-Scott-Rodino.

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I thank you for your prompt attention to this matter and look forward to your response. If you have questions or would like supplemental facts please call me at (212) 819-8285.

Very truly yours,
[REDACTED]

12/21/89
Called [REDACTED] to ask if loan to Walter was made in the ordinary course of Sender's business. He represented that it was that Sender is in the business of making loans of this sort. On his representation, I told him that the transaction described in his letter is exempt.

T. F. H.