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REIT

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July 17, 1992

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FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE

VIA HAND DELIVERY

Mr. Patrick Sharpe
Compliance Specialist
Federal Trade Commission
Pre-Merger Notification Office
6th and Pennsylvania Avenues, N.W.
Room 301
Washington, D.C. 20580

Dear Patrick:

This is in follow up to my July 9, 1992 letter to you concerning the reportability of various real property related transactions under the Hart-Scott-Rodino Antitrust Improvements Act ("Hart-Scott-Rodino Requirements") (copy of letter attached) and our subsequent conversation on July 15, 1992 discussing that letter.

As you indicated on the telephone on July 15, the Pre-Merger Notification Office Staff of the Federal Trade Commission concurs with my analysis that the transactions described in situations 1-4 would not be subject to the Hart-Scott-Rodino Requirements. I have confirmed with my client that with regards to situation 5, the qualified intermediary acts as an agent both when holding the cash proceeds and when purchasing the replacement property in a § 1031 exchange. You indicated to me on July 15 that so long as the intermediary functions as an agent, the Pre-Merger Notification Office Staff would not view the intermediary's purchase as a separately reportable event. Instead, the PreMerger Notification Office would analyze whether the principal in the transaction, Company A, would have a reporting requirement. Since the REIT exemption only applies when the REIT is purchasing rather than selling the real property, the first transaction described in situation 5 (i.e., the sale of property owned by Company A) would not be automatically exempt from Hart-Scott Requirements and, if the filing thresholds were satisfied by this portion of the § 1031 transfer, a filing may be required. However, the second portion of

OK

correct

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the § 1031 transfer (i.e., the purchase of the replacement property and ultimate transfer to Company A) would be exempt from Hart-Scott Requirements since Company A is a REIT. *correct*

Please let me know immediately if I have in any way misunderstood the Pre-Merger Notification Office's position on these transactions. Thank you for your assistance in this matter.

Sincerely



Enclosures

*This letter is correct
I concur.*

*called  7-21-92
(BS)
(RS) CONCURS*