

7A(c)(1) REITs

[REDACTED]

September 13, 1995

[REDACTED]

SEP 14 9 55 AM '95
PREMERGER NOTIFICATION
OFFICE
FEDERAL TRADE
COMMISSION

OUR FILE NUMBER

18057-0022

VIA FACSIMILE (202) 326-2624

Ms. Micheline Hershey
Federal Trade Commission
Bureau of Competition
Premerger Notification Office
6th and Pennsylvania Avenue N.W.
Room 303
Washington, D.C. 20580

Re: Hart-Scott-Rodino Pre-Merger Notification and Report Form

Dear Ms. Hershey:

Thank you for taking the time to speak with me today regarding my question on whether the merger of two Real Estate Investment Trusts ("REITs") is exempt from the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). This letter is to confirm our understanding of the Federal Trade Commission's ("FTC's") interpretation of the proposed transaction from our telephone conversation earlier today.

Our client, a [REDACTED] real estate investment trust (the "Trust"), currently taxed pursuant to the real estate investment trust ("REIT") provisions of sections 856 et seq. of the Internal Revenue Code (the "Code"), plans on merging with another REIT in a tax-free reorganization under Section 368 of the Code. Both REITs meet all jurisdictional requirements (commerce, size of person and size of transaction) for filing under the Act. Section 7A(c)(1) of the Act, however, exempts from filing the "acquisitions of goods or realty transferred in the ordinary course of business." Section 802.1 of the Regulations further provides that an acquisition of the voting securities of an entity whose assets "consist or will consist solely of real property and assets incidental to the ownership of property shall be deemed an acquisition of realty." 16 C.F.R. § 802.1(a).

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During our telephone conversation you indicated, that pursuant to FTC interpretation, all acquisitions of income producing realty by REITS is considered to be in the "ordinary course of business" and is exempt under Section 7A(c)(1). Therefore, the acquisition of a REIT by another REIT or the merger of two REITS would be exempt from filing under the Act.

Given the foregoing, I would like to confirm that in your opinion, the merger of one REIT into another REIT would be exempt from filing under the Act. If you disagree with the foregoing or if I have misstated your position, please let me know by either telephoning me or faxing me at the numbers above. Thank you very much for your assistance.

Very truly yours,

[REDACTED]

cc:

[REDACTED]

Confirmed on Sept 14, 1995 (by phone)

M.H.