

UNCLASSIFIED FOR

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BY HAND DELIVERY

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AS we recently discussed on the telephone, I am requesting the Premerger Office's informal opinion on the reportability of the following transaction.

Our client, [REDACTED], an employee benefit plan, intends to acquire the [REDACTED] in Washington, D.C. for approximately \$35 million from [REDACTED] a partnership controlled by the [REDACTED]. The [REDACTED] is acquiring the hotel for investment purposes in the ordinary course of its business of

managing its investment portfolio. The [REDACTED] is regulated under [REDACTED] and makes investments solely for the purpose of preserving pension assets and funding pension obligations. [REDACTED] likewise routinely buys and sells [REDACTED] in the ordinary course of its business in managing its investment portfolio.

As we discussed, the relevant Hart-Scott materials include Section 7A(c)(1) of the Act, exempting "realty" acquisitions "in the ordinary course of business," and Proposed Rule § 802.2(b), 50 Fed. Reg. 38742, 38758 (1985), which I understand embodies the current informal interpretations used by the Staff.

Examples of such acquisitions of office buildings or residential properties" because, as explained in the Statement of Basis and Purpose:

[REDACTED]

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It is unlikely that acquisition of property named in proposed § 802.2 would have any significant potential to increase market power. The low risk of anticompetitive transactions is a result of the widely dispersed holding of these resources as well as the small size of ~~typical transactions relative to the total~~ amount of resources.

50 Fed. Reg. at 38756. It is submitted that similar policy considerations should apply here to the acquisition of a hotel by the [REDACTED] and that no Hart-Scott filing should be required.

Sincerely,

[REDACTED]

cc: [REDACTED]