

802.1  
12668  
Office  
Building

[REDACTED]

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**HAND DELIVERED**

Mr. Patrick Sharpe

JAN 31  
RE  
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6th Street and Pennsylvania Avenue, N.W.

Re: Pre-Merger Notification Reporting Requirements/Exemption from Requirements for Acquisition of Certain Real Property and Other Intangibles

Dear Mr. Sharpe:

This letter will confirm our phone conversations of Wednesday, January 23, Thursday, January 24, and Wednesday, January 30, 1991, and is intended to amend and supercede my letter of January 29, 1991. During our conversations we discussed the Staff's position with regard to the exemption from pre-merger notification reporting requirements for the acquisition of certain types of real property and the assignment of proceeds from a lease. As a result of our conversation and a review of the specifics of our client's proposed

notification rules promulgated pursuant to section 7a of the Clayton Anti-Trust Act and set forth in 16 CFR Parts 801-803 (the "Rules"). For your records, I have restated certain details of our client's proposed acquisition through a 95%-owned corporate subsidiary, or a portfolio of real estate in the state of [REDACTED]. If, after reviewing this letter, you differ with my characterization of the Staff's opinion, please contact me

As described to you, our client, an institutional investor, intends to enter into a series of transactions, the first of which involves the formation of a corporation ("Newco") with one other investor. Our client has assets in excess of \$100 million. The

[REDACTED]

Mr. Patrick Sharpe  
January 31, 1991  
Page 2

other shareholder will be an individual unrelated to our client whose total assets do not exceed \$10 million. This individual also does not hold a controlling interest in any corporation,

\$801.40 since one of the acquiring persons has assets in excess of

The second phase of the acquisition consists of the purchase by Newco of a portfolio of 92 parcels of real property and related assets located throughout the State of [redacted]. The portfolio is being purchased from the real estate owned ("REO") portfolios of several different banks owned by the same bank holding

undeveloped land, residential lots, and office buildings. Under Section 7a of the Clayton Act and Rule §802.1, the acquisition of real property transferred in the ordinary course of business is

Staff's interpretation and application of the statutory provisions and the Rules, the acquisition in all cases of office buildings, residential properties and undeveloped land is also exempt from the reporting requirements. You have noted that to the extent any of the office buildings contains retail or commercial space an

building exceeded \$15 million. You further noted the Staff's position that, for the purpose of determining whether the value of retail or commercial space being acquired exceeded \$15 million, the

*Do aggregate*

be aggregated.

A number of the parcels being acquired consist of office-

been faced with the question of exactly what determines whether a property is "primarily" warehouse or office space and that this is somewhat of a gray area. However, you agreed that, to the extent

*space*

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Mr. Patrick Sharpe  
January 31, 1991  
Page 3

the office space in the building is greater than fifty percent of its total usable square footage, the building would probably be considered by the Staff as an office building and thereby exempt property.

Finally, an additional element of the transaction is the assignment to Newco of certain proceeds of a ground lease. One of the banks involved in the transactions owns a parcel of land which is subject to lease and on which the tenant has constructed an office building. Under the ground lease agreement, the tenant is obligated to pay base rent as well as a certain "percentage rent," "sales proceeds," and "excess financing proceeds," each as defined under the lease. All proceeds other than the base rent will be

The lease

payment of the agreed-upon value of the other proceeds. You explained that it is the Staff's opinion that the acquisition of a stream of income is exempt from the reporting requirements of the Act.

They are buying a stream of income

Based on the foregoing understanding of the Rules and the Staff's opinion, we have concluded that the value of all the

banks is less than \$10 million in the aggregate. Accordingly, we have concluded that the proposed acquisition would not be a reportable event under the Rules.

If you disagree with my restatement of our discussions or the Staff's opinion, please call me as soon as possible.

I concur  
(RS) agrees, as long as lease is not transferred.

called [REDACTED]  
1-31-91