§ 7A(c)(6)
of the Act

[redacted]

[redacted]

[redacted] material may be subject [redacted]
[redacted] dentiality pro[redacted]
[redacted] (h) of th[redacted]
[redacted] stricts release [redacted]
Freedom of Information Ac[redacted]

October 2, 1991

John Sipple
~~Senior Attorney~~ Assistant Director
Pre-Merger Notification Office
Federal Trade Commission
Room 306
6th and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Hart-Scott-Rodino Act Advice

Dear John:

This will confirm the advice received on October 1, 1990 ~~regarding the interpretation of Exemption 6, 15 U.S.C. § 18a(c)(6).~~ The question involved an acquisition of one rail carrier by another, in which the transaction would be implemented through a voting trust during the pendency of proceedings before the Interstate Commerce Commission. The FTC/DOJ staff position is that Exemption 6 applies, and no HSR filing is required where the application to the regulatory agency is filed prior to or contemporaneously with the closing on the sale and transfer to the voting trust.

Sincerely,

[redacted]

Called on 10/3. Agrees the letter reflects the advice given.

In conclusion, the following rule of thumb should be used in determining the availability of the Section 7A(c)(1) exemption: The exemp- [illegible]

[illegible] where the buyer and seller are competitors, or if the sale is *not* a typical business transaction for either the buyer or seller, the FTC should be consulted in order to reduce the risk involved in relying on the exemption. Thus, counsel must carefully review transactions on a case-by-case basis in order to determine whether the transaction is in the "ordinary course of business" within the somewhat narrow reading being [illegible]

[illegible] real estate. Residential developments may include assets related to the construction or sale of the properties. In each case the FTC staff has re- [illegible]

[illegible] able size. In an unusual twist, however, the FTC staff does not require aggregation of the nonexempt portions of realty parcels located in different cities. Thus, if a transaction includes the sale of two office buildings located in Chicago, each with retail space valued at $10 mil- [illegible]

[illegible] far as to override the general asset aggregation rules. Therefore an acquisition of two nonexempt hotels for $10 million each, one in New York and one in New Orleans would be reportable.