7A(c)(1); 802.1(a)

[redacted]

BY FAX

October 4, 1991

Mr. Richard Smith
Pre-Merger Notification Office
Room H-303
Federal Trade Commission
[redacted]

Dear Mr. Smith:

I am writing in further reference to the request for advice contained in my letter of September 19, 1991, and to follow up on our conversations of September 23 and 24, 1991.

In this letter, I will provide our client's responses to the factual inquiries that you made, and discuss certain legal points [redacted]

You asked whether any of the office buildings in question contains retail space valued at $15 million or more. The answer is no.

You asked for more information on the nature of the post of- [redacted]

ly a distribution center and office building, without any facili- [redacted]

You asked for more information on what I characterized as [redacted]

The one that [redacted]

[redacted] the legal issues you suggested that the inclusion

Rodino filing might preclude reliance on Reg. § 802.1(a). I re-

[redacted]

Section 802.1(a) merely provides that "an acquisition of the voting securities of an issuer whose assets consist . . . solely

[redacted]

language does not distinguish between "exempt-type" realty and "non-exempt-type" realty. In this case, "C"'s assets do consist

[redacted]

paragraph of this letter). Section 802.1(a) thus explicitly pro-
vides that an acquisition of "C"'s voting securities is to be

[redacted]

whether the acquisition is exempt. For the answer to that ques-
tion, it is necessary to turn to the statute's exemption of "cer-

tain kinds of (among other things) office buildings [redacted]
exemption. Plainly, if the proposed transaction had involved the

[redacted]

realty is less than $15 million). Under these circumstances, § 802.1(a) dictates that the fact that the acquisition is of secur-

[redacted]

than form, also compels this conclusion.

The other legal point that you raised is based on the fact that the proposed transaction involves the sale of the securities of "C," which in turn owns 100% of the voting securities of other entities; i.e., "C" indirectly owns the realty at issue here. You suggested that this therefore may not be the acquisition of the voting securities of an entity whose assets consist of real property and incidental assets, as required by § 802.1(a). I respectfully suggest that such a narrow reading of § 802.1(a) would create a meaningless distinction that could not have been intended by the drafters of the regulations, and that would serve no enforcement objective. It is of no possible antitrust significance that an entity's assets are held by a 100%-owned subsidiary, rather than by the entity itself. Whatever the tax or cor-

porate reasons for a structure consisting of levels of subsidiaries, the competitive consequences are precisely the same as if the structure had no such levels.

I appreciate the opportunity to present these views to you. If I can be of further assistance, please do not hesitate to call.

Thank you.

Very truly yours,

[redacted]

10/15/91 Advised [redacted] that we viewed the sale of the voting stock as the sale of an entity whose assets consist solely of real property and assets incidental to the ownership of real property and, as such, was exempt under rule 802.1(a). Since the post offices were leased by the federal government, we viewed the sale of stamps or other customer activities conducted in each building as non-retail. However, if the buildings had been leased to a

our position might well have been different. Also advised that this position reflects the view of the PMN office and not that of the Commission.

R.T. Smith