802.1

[redacted]

May 3, 1994

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION
OFFICE
MAY 3 3 29

This material may be subject to the

VIA HAND DELIVERY

Mr. Patrick Sharpe

[redacted]

Dear Patrick:

This is to confirm our telephone conversations on Friday April 29, 1994 and earlier today in which you agreed that the following transaction would be exempt from notification under the

A is a [redacted] business trust which will become, either

[redacted]

on 4-8-93 [redacted] those presented in a letter to Richard Smith in which the advice given was the deal is exempt under 18a (c)(1) ordinary course.

corporations with common shareholders, but with each being its own ultimate parent entity. B,C, and D each own as its principal asset a [redacted] A proposes acquiring all three [redacted] for a total consideration of $30 million. This [redacted] business trust in exchange for restricted shares in the REIT to the shareholders of B,C, and D[2] or cash in the amount of $30 million [redacted] the outstanding balances on any mortgages [redacted]

[redacted] reporting under 15 U.S.C. § 18a(c)(1) since it is an acquisition of [redacted] in the ordinary course of business[3]. This exemption applies to REITs even though the property they are purchasing is income producing. Moreover, given the complexity of obtaining REIT approval, the FTC staff has applied the exemption to entities in the process of becoming a REIT so long as that entity is already conducting its business affairs consistent with those activities typically undertaken by the REIT.[4]

Furthermore, you confirmed that the exemption applies even if the transfer is accomplished through the merger of the [redacted] into the [redacted] business trust [redacted] prior to the actual conversion of the trust into a REIT. Under 15

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thereafter; we understand, however, that this requirement need not be met prior to the consummation of this acquisition in order for the transaction to be exempted from the reporting requirements of the H-S-R Act.

[2]The receipt of the REIT shares by the four shareholders of B,C, and D will be below the reporting thresholds of the H-S-R Act [redacted] In addition, based upon the allocation of the consideration among B,C, and D and the financial statements of B,C, and D, it is possible that one or more of these transfers would be exempt from reporting under the H-S-R Act under 16 C.F.R. § 802.20 on the size of the parties test prescribed in 15 U.S.C. § 18a. For purposes of this letter alone, however, we will assume that the size of the parties and minimum dollar value exemptions do not apply.

[4]If for some reason the REIT does not receive the requisite [redacted] the [redacted] reporting requirement for the [redacted]

C.F.R. § 802.1, an acquisition of the voting securities of an entity whose assets consist or will consist solely of [redacted] and assets incidental to the ownership of [redacted] is considered an acquisition of realty. It is my understanding that the FTC staff would considered the merger of the corporations owning the [redacted] as being tantamount to the purchase of securities of an entity whose assets consist solely of real property, and, therefore, exempt the transaction from reporting under 16 C.F.R. § 802.1 so long as the purchaser is a REIT.

Please let me know immediately if I have in any way misunderstood the FTC's position on this issue.

[redacted]

This transaction is exempt.
Informed [redacted] 5-3-94
(RS)

see letter to Dick Smith
April 8, 1993 that
confirms the PMN Office
position on REITS.

RS - concurs